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# INCREASE IN FEES PAYABLE TO THE PATENT OFFICE

## HEARING

BEFORE

## SUBCOMMITTEE NO. 3

OF THE

## COMMITTEE ON THE JUDICIARY

## HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH CONGRESS

FIRST SESSION

ON

## H. R. 7151

TO INCREASE THE FEES PAYABLE TO THE PATENT OFFICE AND FOR OTHER PURPOSES

JUNE 20, 1957

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# INCREASE IN FEES PAYABLE TO THE PATENT OFFICE

THURSDAY, JUNE 20, 1957

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE NO. 3 OF THE
COMMITTEE ON THE JUDICIARY,
*Washington, D. C.*

The subcommittee met, pursuant to call, at 10:15 a. m., in room 327, Old House Office Building, Hon. Edwin E. Willis (chairman of the subcommittee) presiding.

Present: Representatives Edwin E. Willis, Jack B. Brooks, William M. Tuck, and Arch A. Moore, Jr.

Also present: Cyril Brickfield, counsel.

Mr. WILLIS. The subcommittee will please come to order.

Other members of the subcommittee will be showing up, but since I understand the House is to meet at 11, I think we should proceed.

We take up this morning H. R. 7151 by our colleague from New York, Mr. Celler, to fix the fees payable to the Patent Office, and for other purposes.

(H. R. 7151 follows:)

[H. R. 7151, 85th Cong., 1st sess.]

A BILL To fix the fees payable to the Patent Office and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That items numbered 1, 2, 3, 4, 8, 9, and 10, respectively, in subsection (a) of section 41 of title 35, United States Code, are amended to read as follows:

"1. On filing each application for an original patent, except in design cases, $40; in addition, $2 for each claim presented at any time which is in excess of five claims in the case.

"2. On issuing each original patent, except in design cases, $50, and $2 for each claim in excess of five.

"3. In design cases: For three years and six months, $20; for seven years, $30; for fourteen years, $40.

"4. On every application for the reissue of a patent, $40 and $2 for each claim in excess of five which is also over and above the number of claims of the original patent.

"8. For certificate of correction of applicant's mistake under section 255 or certificate under section 256 of this title, $15.

"9. For uncertified printed copies of specifications and drawings of patents (except design patents), 25 cents per copy; for design patents, 10 cents per copy; the Commissioner may establish a charge not to exceed $1 per copy for patents in excess of twenty-five pages of drawings and specification and for plant patents printed in color; special rate for libraries specified in section 13 of this title, $50 for patents issued in one year.

"10. For recording every assignment, agreement, or other paper not exceeding six pages, $10; for each additional two pages or less, $1; for each additional patent or application included in one writing, where more than one is so included, $1 additional."

SEC. 2. Section 41 of title 35, United States Code, is amended by adding the following subsection:

"(c) The fees prescribed by or under this section apply to any other Government department or agency, or officer thereof, except that the Commissioner may waive the payment of any fee for services or materials in cases of occasional or incidental requests by a Government department or agency, or officer thereof."

SEC. 3. Section 31 of the Act approved July 5, 1946 (ch. 540, 60 Stat. 427, U. S. C., title 15, sec. 1113), is amended to read as follows:

"(a) The following fees shall be paid to the Patent Office under this Act:

"1. On filing each original application for registration of a mark in each class, $35.

"2. On filing each application for renewal in each class, $25; and on filing each application for renewal in each class after expiration of the registration, an additional fee of $5.

"3. On filing an affidavit under section 8 (a) or section 8 (b), $10.

"4. On filing each petition for the revival of an abandoned application, $10.

"5. On filing notice of opposition or application for cancellation, or for declaring an interference between an application and a prior issued registration, $25.

"6. On appeal from an examiner in charge of the registration of marks to the Commissioner, $25.

"7. On appeal from an examiner in charge of interferences to the Commissioner, $25.

"8. For issuance of a new certificate of registration following change of ownership of a mark or correction of a registrant's mistake, $15.

"9. For certificate of correction of registrant's mistake or amendment after registration, $15.

"10. For certifying in any case, $1.

"11. For filing each disclaimer after registration, $15.

"12. For printed copy of registered mark, 10 cents.

"13. For recording every assignment or other paper not exceeding six pages, $10; for each additional two pages or less, $1; for each additional registration or application included, or involved in one writing where more than one is so included or involved, additional, $1.

"14. On filing notice of claim of benefits of this Act for a mark to be published under section 12 (c) hereof, $10.

"(b) The Commissioner may establish charges for copies of records, publications, or services furnished by the Patent Office, not specified above.

"(c) The Commissioner may refund any sum paid by mistake or in excess."

SEC. 4. (a) This Act shall take effect three months after its enactment.

(b) Item 1 of section 41 (a) of title 35, as amended by this Act, does not apply in further proceedings in applications filed prior to the effective date.

(c) The amendment of item 2 of section 41 (a) of title 35 by this Act does not apply in cases in which the notice of allowance of the application was sent prior to the effective date and in such cases the fee due is the fee specified by item 2 prior to its amendment.

(d) The amendment of item 3 of section 41 (a) of title 35 applies in the case of applications for design patents filed prior to the effective date for one of the lower terms and which are amended after the effective date to one of the higher terms.

(e) Item 4 of section 41 (a) of title 35, as amended by this Act, does not apply in further proceedings in applications for reissues filed prior to the effective date.

(f) Item 3 of section 31 of the Trademark Act as amended by section 3 of this Act applies only in the case of registrations issued and registrations published under the provisions of section 12 (c) of the Trademark Act on or after the effective date.

SEC. 5. Section 266 of title 35, United States Code, is repealed.

The chapter analysis of chapter 27 of title 35, United States Code, is amended by striking out the following item:

"266. Issue of patents without fees to Government employees."

Mr. WILLIS. I see that we have with us in the room a gentleman we are always proud to hear from, whom we admire very greatly, the Commissioner of Patents, Mr. Watson. Mr. Watson, we shall be glad to hear from you first, sir.

## TESTIMONY OF HON. ROBERT C. WATSON, COMMISSIONER OF PATENTS, UNITED STATES PATENT OFFICE

Mr. WATSON. Mr. Chairman and members of the committee, I am very happy to have the opportunity to appear in support of the bill and to recommend that the committee approve it and recommend its passage.

Just 2 years ago this month you conducted a hearing upon a generally similar bill, and upon that occasion Mr. Walter Williams, Under Secretary of Commerce, appeared on behalf of the Department and made an introductory statement. He is not present this morning. That is not because of any lack of interest in the bill. It is still a matter of prime concern to the Department. He sends his respects to the committee and his hope that the committee will act favorably.

A statement has been prepared, and I believe that copies of it are in the hands of the committee. It is a rather extensive statement. I do not propose to read it, particularly in view of the fact that there are in attendance quite a few persons who I know will wish to make statements either for or against the passage of the bill after I have concluded mine.

(The statement referred to follows:)

STATEMENT OF HON. ROBERT C. WATSON, COMMISSIONER OF PATENTS, UNITED STATES DEPARTMENT OF COMMERCE, WASHINGTON, D. C.

H. R. 7151 is a bill to fix the fees payable to the Patent Office for the services which it renders and the papers and documents which it furnishes the public upon request. If enacted into law, the total income accruing from the activities of the Patent Office and payable into the Treasury would be substantially increased. The bill was transmitted to the Congress by the Department of Commerce and is believed to reflect the wishes of both the executive and the legislative branches of Government. It is similar to H. R. 7416, which was reported by the Committee on the Judiciary in the 84th Congress, but contains a few differences.

This bill proposes to increase the amount of money received in the form of fees and is believed to be appropriate in view of the fact that there has been no upward adjustment of major patent fees of the Patent Office since 1932, despite steadily rising costs.

The bill contemplates increases in those patent fees to which inventors and industry have long been accustomed, i. e., fees payable by the applicant upon the filing of his application and fees payable after it is allowed and before it is issued as a patent. Inventors and their backers have, from the time when our patent system first began to function, paid fees when securing patents. A substantial fee is necessary to make certain that the Patent Office is not deluged with applications which disclose and claim devices of little value. Fees larger than those necessary to bring about this screening must be regarded as having the production of revenue as their objective.

### INCREASE IN COSTS

During the last 3 complete fiscal years, 1954, 1955, and 1956, the annual expenses of the Patent Office averaged $12,678,325 per year, this sum not being sufficiently large to enable the Patent Office to employ a sufficient number of examiners to keep abreast of the inflow of new work. During this same period, 1954 to 1956, the average annual income of the Patent Office from fees and charges was $6,158,107. This amount was equal to 48 percent of the expenses.

The budget for the current fiscal year, 1957, is $17 million, which provides for increasing the Patent Office staff and the initiation of a program of bringing the Patent Office up to date. The receipts for this year are estimated at $6.8 million, about 40 percent of the expenses.

In contrast, there may be mentioned the expenses and income of the prewar period. During the 1930's the expenses of the Patent Office averaged $4,535,000 per year and the income averaged $4,269,000 per year; the income was 94 percent of the expenses.

The last time that the major patent fees were changed was in 1932. Since that time the expenses of the Patent Office have increased considerably, particularly during the last 10 years. During the 1930's, as has been stated, the expenses averaged approximately $4½ million per year. Since that time, however, expenses have risen to 3 to 4 times the average during the 1930's. This increase has been due to several factors, the primary ones being the successive increases in salary costs and the increases in printing costs. About 77 percent of the Office expenditures goes toward the salaries of its employees. The average salary paid by the Patent Office today to its employees is about 125 percent higher than it was during the 1930's. The greatest part of this increase has come about by statutory increases in the salary scales of Government employees, notable increases in the salary scales having taken place in 1945, 1946, 1948, 1949, 1951, and 1955. The other part of the increase in the average salary is due to changes in the position structure, consistent with civil-service regulations, and includes the effect of improved promotional opportunities for professional members of the staff.

The next major item of expense in the Patent Office is printing, mainly of copies of patents, which accounts for about 19 percent of the total expenses. This cost has also increased over the past 20 years. The printing rates paid to the Government Printing Office today are slightly over 100 percent greater than they were 20 years ago. The other items of costs in the Patent Office have also increased proportionately. Part of the increase in cost of operation is also attributable to the fact that present-day applications are, on the average, larger in size and disclose more complex inventions than those of past years and thus require more time and effort to dispose of.

These rises in costs are in general parallel to the rise in the cost of living generally. Using the Bureau of Labor Statistics data of price indexes and the purchasing power of the dollar, the patent fees that the applicant for patent paid in 1934 have decreased to about half their value. Stated in other words, if the applicant was paying in the same proportion as he pays for other items, the fees should be about twice what they were 20 years ago.

These factors indicate that some increase in Patent Office fees is necessary. No attempt is made here to evaluate relative benefits accruing to the public and the individual inventor respectively. The fees have not been adjusted for some years and a readjustment is warranted now. H. R. 7151 is a bill which represents a constructive step toward correcting an existing imbalance.

## AUTHORITY FOR PATENT OFFICE FEES

The Patent Office administers both the patent and trademark laws. The trademark work of the Patent Office is about 7 percent of the work of the Office insofar as expenses are concerned. Trademarks will be discussed separately, and what follows is concerned primarily with patents and patent fees.

Patent fees are charged by the Patent Office under authority of section 41 of title 35. Section 41 specifies fees for 11 different items, and contains authorization for the Patent Office to establish charges for other services which are not specifically enumerated in the statutory schedule. Under this latter authority a number of fees have been established administratively by the Patent Office. The fees, both those fixed by statute and the administrative fees, comprise a large number of different items but only a very few are of any substantial consequence.

## PATENT FILING AND FINAL FEES

The most important fees in patent cases are the fee payable by an applicant for patent when he files the application and the fee paid by him when he is to receive the patent. These 2 fees account for 54 percent of the total revenue of the Patent Office. The fee on filing the patent application is $30, and the fee payable when the patent is obtained, called the final fee, is also $30 (in addition there is a charge of $1 for each claim in excess of 20, but this plays only a small part in the total revenue received from these 2 fees). The filing fee and the final fee of $30 each were so established in 1932.

It may be interesting at this point to say a few words on the evolution of these fees, or those corresponding to them. The Patent Act of 1793 prescribed a single fee of $30 for obtaining a patent. When the patent law was revised in 1836, this fee of $30 was retained. The fee was payable on filing the application, but if the patent was refused the applicant was entitled to a refund of $20. Since a large proportion of applications are refused and do not issue as patents, administrative convenience led to a change in the law in 1861 to split the fee for obtaining a patent into 2 parts, 1 part payable on filing the application and the other part

payable when the patent was to be granted. At the same time an increase in the fee was made. The act of 1861 established a filing fee of $15 and a final fee of $20. These 2 fees remained unchanged until 1922 when the filing fee was raised to $20, making both fees $20 each. In 1930 these fees were both changed to $25, and in 1932 they were both raised to $30, which are the fees today. The additional fee for claims over 20 was added in 1927.

PROPOSED INCREASE IN FILING AND FINAL FEES

The fees just mentioned being the major fees of the Patent Office, both in importance and in volume, it is apparent that any increase in Patent Office fees must primarily be directed to them if any substantial increase in revenue is to be obtained.

The bill proposes to raise the filing fee from $30 to $40, and proposes to raise the final fee from $30 to $50; at the same time a charge of $2 for each claim presented at any time which is in excess of 5 claims in the case is also imposed. The result of these proposals would be, on the average, to increase the present patent filing fee by approximately 60 percent and the final fee by approximately 80 percent.

During the 3 years, 1954 to 1956, the Patent Office received an average of $2,256,549 per year from patent filing fees. Had the proposed rate been in effect and with the same volume of work, the receipts from filing fees would have been over $3.6 million, part of the increase (about $800,000) coming from the increase of $10 in the basic filing fee, and part of the increase (one-half million) from the charge for claims over 5.

During this same period, the receipts from patent final fees averaged $1,058,584. Under the proposed rate of a basic final fee of $50 plus an additional charge for each claim over 5, the receipts would have been $1,943,964.

From both filing and final fees, the actual receipts were $3,315,133. Estimated receipts under the proposed schedule would have been $5,567,916, about 68 percent higher than the actual receipts.

FEE ON NUMBER OF CLAIMS

It should be noted that part of the increase in the filing and final fees is based upon the number of claims in the application and would be variable.

The applications for patent which are filed in the Patent Office vary considerably in their nature and in the amount of work that is required to examine them. One application may be very short and simple and require only a few hours of the examiner's time, while another application may be considerably involved and lengthy and require days and even weeks of the examiner's time. The proposal has often been make and considered that the charge be made proportionately to he size of the application or to the amount of work involved in connection with the application. A study of the size of applications and of the amount of time involved in examining them shows that there is an average progressive increase in the time required in accordance with the number of claims presented in the application, and also the average number of claims in an application increases with the size of an application as measured by the number of pages of description and sheets of drawings. Accordingly, a part of the fee to be paid on applying for and on obtaining a patent is calculated according to the number of claims in the case. For each claim over 5, a fee of $2 is proposed. This is approximately equivalent to charging according to the size of the case or according to the amount of work involved.

The distribution of claims in applications shows that 25 percent of the applications are filed with only 5 or fewer claims, and the charge for extra claims will not affect these applications. It is commonly accepted that many applications contain more claims than are necessary and the charge for claims over five will have the salutory effect of decreasing the number of unnecessary claims in some cases and thus saving work on the part of the Patent Office. Taking into account the anticipated decrease in the number of claims, the charge of $2 for each claim presented over 5 is estimated as being equivalent to about $8 per application filed in revenue received on filing, and about $4 per patent issued in revenue received on issuing the patent.

This is the place in which the present bill differs from those introduced in the last Congress. In H. R. 4983 there was a charge of $5 for each claim over 5. The bill as reported by the committee, H. R. 7416, changed this to a charge of $2 for each claim over 5, plus $2 for each sheet of drawing over 1 and $2 for each

page of specification over 10. These latter two charges, while conforming to the theory of graduating the fee according to the size of the application, are omitted from the present bill.

PRINTED COPIES OF PATENTS

The source of revenue which produces the next highest percentage of the total receipts of the Patent Office, after the patent filing and final fees, is the charge for printed copies of patents. These patents must be printed and made available to the examining corps for use in the examination of later filed applications, being the most important part of the Patent Office library and vitally essential to the examination system. The library must be maintained and patents added week by week as issued. The cost of maintaining the library is to be added to salary costs in determining the total cost of examining.

The revenue received from the sale of copies of patents during the 3 years 1954–56 averaged $1,105,879 (not counting design and trademark copies), which was about 18 percent of the total receipts of the Patent Office. The charge for copies of patents is 25 cents, which was fixed in 1946. Prior to that time the charge was 10 cents per copy, which had been established in 1919. The bill does not propose to change the present charge of 25 cents per copy except in a minor respect.

The bill contains a proviso authorizing the Commissioner to establish a charge not to exceed $1 per copy for patents in excess of 25 pages of drawings and specification, and for copies of plant patents printed in color. These patents are not very numerous in proportion to the total patents printed and the purpose of this proviso is primarily to enable a higher price to be charged for the patents which are most expensive to reprint, to discourage their purchase except when necessary. The added revenue which would be received, assuming the higher price were to be charged, is estimated at $15,000 per year.

Printing copies of the specifications and drawings of patents must be regarded as an essential feature of an examination system of granting patents. Aside from the printed copy which is attached to the grant, many printed copies are needed for the examiners' search files which are used when searching the prior art in the examination of new applications, and for the library (including the public search room), to be used for library purposes.

Of the printed copies which are disposed of, part are used by the Patent Office itself, for the search files and for other purposes. Part of the copies are supplied to foreign governments in exchange for printed copies of the patents issued by those governments. These foreign patents are placed in the examiners' search files to be utilized as part of the prior art to be searched, and are also placed in the library to be utilized for library purposes. This is a way of obtaining material essential to the operation of the Patent Office which would otherwise have to be paid for in cash. Another part of the printed copies are supplied to public libraries in the United States at a nominal charge, to be used by the public. About half of the copies are used for these Patent Office and public-service purposes.

It is thus seen that the printing of patents is an essential part of having an examination system. The copies which are sold to the public may be looked upon as a byproduct or a surplus, from which some revenue is obtained. With this view the purchasers of the printed copies should not be required to pay the entire expense of producing all the copies utilized. The present charge of 25 cents is believed to be a reasonable charge under the circumstances.

PHOTOCOPIES OF RECORDS

The source of revenue (excluding trademark fees) which is next in volume of receipts is the supplying of photocopies of records, which brings in about 7 percent of the total Patent Office receipts. The charge for photocopies is fixed administratively, and was raised from 20 cents per sheet to 30 cents per sheet on January 1, 1953. This item is not included in the bill since it is one of the administrative fees, but it is mentioned here to make the reference to the major patent fees complete. There are no plans for changing this fee since, with the recent increase, which has not met with any dissatisfaction, the charge for copies of records is more than sufficient to pay for the work involved in producing such copies. For the 3 years 1954–56, the average cost in this area was $298,082 while the actual receipts averaged $460,581, the receipts being greater than the expenses.

### RECORDING ASSIGNMENTS

The next significant item is the charge for recording assignments, which produces about 2½ percent of the receipts of the Patent Office. The present charge for recording assignments is a basic charge of $3 for each paper, with an additional charge depending upon the size of the paper. The present bill proposes to raise the basic charge to $10, both for patents and trademarks. This is somewhat in excess of the expenses involved in recording assignments, but this is believed to be a place in which such a charge can be imposed.

The receipts of the Assignment Branch of the Patent Office averaged $175,576 per year (including $143,814 for recording fees) during the 3 years 1954–56. The receipts under the proposed fee would have been $541,519 per year, which includes $509,757 for recording fees.

### DESIGN PATENTS

The next item in importance from the standpoint of the amount of receipts is the fee charged for design patent applications, which accounts for about 1½ percent of the total Patent Office receipts. Design patents are issued for a term of 3½, 7, or 14 years, as the applicant may request, and the present fees fixed by statute are $10, $15, and $30, respectively. These fees were established in 1861 and there has been no change since then. The present bill proposes to change these fees to $20, $30, and $40, respectively. The proposed fees would raise the income from design applications from $92,268 to $151,400.

### REMAINING PATENT FEES

The remaining patent fees chargeable in the Patent Office are of minor significance from the standpoint of revenue produced. The bill proposes to change only two others.

The fee for applying for a reissue patent is raised from $30 to $40, with $2 for each claim in excess of 5, to parallel the change in the other fees. The fee for a certificate of correction of an applicant's mistake is changed from $10 to $15. The revenue from both of these fees is quite small in proportion to the total receipts of the Patent Office and they are adjusted incidental to the changes in the other fees.

### CHARGES TO OTHER GOVERNMENT AGENCIES

The bill contains a provision in section 2 requiring other Government departments and agencies to pay the same fees that are paid by private individuals when they have business before the Patent Office. Various Government departments file large numbers of patent applications in the Patent Office and order large numbers of patent copies and other copies of records. Considerable dissatisfaction has been expressed that the Government should obtain these materials and services free when private individuals must pay. Altogether, about 2 percent of the work of the Patent Office is done free for other Government departments or agencies. For the fiscal years 1954 to 1956 the total fee value of items and services furnished other Government agencies averaged about $114,000 per year (at the current rate of fees). At the rates of fees proposed in the bill, approximately $195,000 per year would be realized.

The bill in the last Congress, H. R. 4983, only proposed to go part way in the charges to other Government departments. The reported bill, H. R. 7416, made this complete, except for the waiver of fees in cases of occasional or incidental requests for services or materials.

### TRADEMARK FEES

In the preceding discussion very little has been said concerning trademarks. As has been stated, the trademark work of the Patent Office accounts for about 7 percent of the expenses. There is considerable unanimity of opinion among the interested segment of the bar that fees for trademarks could be reasonably made such that the total expense of the trademark operation is recovered. The situation in connection with trademarks is different from that in connection with patents, since trademarks are registered only when there is a going business in connection with the goods on which the trademark is used, and the expense of registering a trademark could be considered as an ordinary minor business expense.

The bill proposes a number of changes in the schedule of fees charged in trademark cases which are such that the total receipts would be approximately equal to the expenses involved in the Trademark Section of the Patent Office.

Trademark fees are specified in section 31 of the Trademark Act of 1946 (15 U. S. C. 1113). Section 3 of the present bill completely rewrites section 31 of the act; it arranges the different fees in separately numbered paragraphs, and omits a number of minor fees specified in the present statute so that they can be fixed administratively, paralleling the corresponding section of the patent statute. The 14 fee items listed in section 3 of the bill are not all new or changed; only items 1, 3, 4, 5, 8, 9, 11, and 13 represent changes over the present law.

The basic trademark fee is a fee of $25 payable when an application for registration of a trademark is filed. This fee is proposed to be changed to $35 by the bill (item 1, sec. 3). This would raise the receipts, on the basis of 1954–56 values, from $510,537 to $714,752.

Item 3 is a new fee. The Trademark Act provides in section 8 that a registrant must file an affidavit of use during the sixth year of the life of the registration in order to maintain the registration in force. If this affidavit is not filed the registration is canceled. The filing of the affidavit is not a mere formality from the standpoint of the work involved in the Patent Office, since certain requirements must be met and the affidavits must be examined and either accepted or refused, and, if refused, further proceedings take place. In view of this fact, and the fact that the affidavit is necessary to preserve the life of the registration, it is proposed to charge a fee of $10 on the filing of these affidavits. The estimated revenue would be $154,000 per year, but, as this new fee is not applied to existing registrations, this amount will not be realized until after 5 years have passed.

Items 4, 5, 8, 9, and 11 make some minor changes or adjustments in the fees involved. Item 13 is the fee for recording assignments; it has been changed in the same manner as for patent assignments.

The cost of all trademark activities, including the appropriate proportion of general activities of the Patent Office, averaged $922,206 per year during the years 1954–56. During this same period the receipts averaged $743,664 per year. If the proposed fee schedule had been in operation the receipts would have been $1,124,615, which is greater than the cost of operation. As previously stated, however, about $154,000 of this annual amount would not be realized until after 5 years have passed.

### EFFECT OF PROPOSED CHANGES

The foregoing discussion presents the changes in patent and trademark fees proposed by the present bill. It has been stated that the income of the Patent Office for the 3 years 1954–56 averaged $6,158,107, which was 48 percent of the cost of $12,678,325. If the proposed schedule had been in operation, and assuming the same volume of business, the receipts would have been $9,245,937, which would be 73 percent of the cost. This is based on a cost of operation of nearly $13 million. For the current fiscal year the receipts under the schedules of the bill would be about 60 percent of expenses instead of the 40 percent that is estimated under the present fees.

*Estimated effect of changes in fees, as proposed by H. R. 7151, 85th Cong. (based on average volume of business during fiscal years 1954–56)*

| Item | Present fee | Actual receipts, 1954–56 average | Proposed fee | Estimated receipts, 1954–56 basis | Increase |
|---|---|---|---|---|---|
| Patent filing fee (sec. 1, item 1) | $30<br>$1 each claim over 20. | $2,221,110<br>35,439 | $40<br>$2 each claim over 5. | $3,019,960<br>603,992 | $798,850<br>568,553 |
| Patent final fee (sec. 1, item 2) | $30<br>$1 each claim over 20. | 1,052,220<br>6,364 | $50<br>$2 each claim over 5. | 1,799,967<br>143,997 | 747,747<br>137,633 |
| Design fee (sec. 1, item 3) | $10, $15, $30 | 92,268 | $20, $30, $40 | 151,400 | 59,132 |
| Reissue fee (sec. 1, item 4) | $30 plus $1 each claim over 20. | 6,059 | $40 plus $2 each claim over 5. | 8,756 | 2,697 |
| Certificate of correction (sec. 1, item 8). | $10 | 1,578 | $15 | 2,367 | 789 |
| Patent copies (sec. 1, item 9) | $0.25 | 1,105,879 | $0.25<br>$1 for large ones and plant patents in color. | 1,139,001 | 33,122 |
| Recording assignments (sec. 1, item 10; sec. 3, item 13). | $3 for 6 pages<br>$1 for each 2 pages over 6.<br>$0.50 for each extra item. | 143,814 | $10 for 6 pages<br>$1 for each 2 pages over 6.<br>$1 for each extra item. | 509,757 | 365,943 |
| Trademark filing fee (sec. 3, item 1). | $25 | 510,537 | $35 | 714,752 | 204,215 |
| Affidavit fee (sec. 3, item 3) | None | 0 | $10 | 154,347 | 154,347 |
| Petition to revive (sec. 3, item 4). | None | 0 | $10 | 880 | 880 |
| Interference fee (sec. 3, item 5) | None | 0 | $25 | 3,633 | 3,633 |
| New certificate (sec. 3, item 8) | $10 | 907 | $15 | 1,360 | 453 |
| Certificate of correction (sec. 3, item 9—part). | $10 | 720 | $15 | 1,080 | 360 |
| Disclaimer and amendment (sec. 3, item 11; sec. 3, item 9—part). | $10 | 2,325 | $15 | 3,488 | 1,163 |
| Fees not changed | | 978,887 | | 987,200 | 8,313 |
| Total | | 6,158,107 | | 9,245,937 | 3,087,830 |

NOTES

1. Estimated receipts include those which would be applicable to Government agencies, aggregating $194,931.
2. Actual expenses, 1954–56 average, amounted to $12,678,325. Actual receipts were equivalent to 48 percent of expenses; estimated receipts would amount to 73 percent of expenses.

Mr. WATSON. I have brought with me certain members of my staff whom I would like to introduce at this time. Mr. Arthur Crocker, First Assistant Commissioner; Mrs. Leeds of New Jersey, who is in charge of our trademark operations; and a new member, Assistant Commissioner Crews, who has recently joined our staff and will exert his effort in the solution of the problems which we face.

Mr. WILLIS. We are delighted to have them with us.

Mr. WATSON. Then there are certain others. Mr. Federico who is well known to the committee, a member of our Board of Appeals.

Mr. WILLIS. He is an oldtimer here.

Mr. WATSON. Mr. Kingsley, our personnel officer, in the event that you wish to know how we are progressing with our effort to build up our staff. Mr. Ellis, our indispensable budget officer, who tries to keep me out of jail.

The statement is rather extensive and I will simply give you very briefly a résumé of certain of its provisions before going directly to the bill.

It points out initially that the costs which must be met in the operation of the Patent Office have materially increased since 1932 when the last major increase in the size of the fee which we charge for the services we render was made.

It goes on to point out that the average salary paid by the Patent Office to its employees has greatly increased since the thirties. In the thirties the average examiner received approximately $3,500 per year. At the present time the average examiner receives around $7,500 per year. The salaries of other employees of the Patent Office have likewise increased from about $1,700 in the thirties to about $3,500, on the average, at present. The costs of printing have materially increased. About 20 percent of the cost of operation of the Patent Office is the printing charge. About 77 percent goes to the pay of employees, examiners and others. So about 3 percent is for incidentals. You see that our major expenses are in the payment of salaries and in payment for printing.

Mr. WILLIS. What percentage of your total cost is attributed to salaries, did you say?

Mr. WATSON. About 77 percent. In 1940 it cost about $18 to print the average patent. In 1957 it costs about $47 to print the same average patent, an increase of some 161 percent.

In addition, we meet increased costs of operation by reason of the increasing complexity of the inventions which are submitted to us for consideration. The production per examiner has fallen. In 1940 each examiner could dispose of around 120 applications per year. That rate has now fallen to about 95 applications per year.

Mr. WILLIS. Why is that?

Mr. WATSON. It is because of two reasons, principally. The nature of the invention which is submitted to us now is more complex on the average than the inventions which were submitted to us in earlier days. The arts have advanced. The scientists and inventors are developing inventions now which are much more difficult to understand. In addition there is vastly more prior art to be considered in the examination which we must necessarily make before we are warranted in issuing a patent. Each year we issue, for instance, between 40,000 and 50,000 patents, and those patents are placed on top of the pile to be considered in the search which the examiner must make when he receives a new application to be examined. He makes his novelty search. The material which must be examined in making a novelty search increases each year, and unless we can be relieved eventually by a mechanical means for storing information and retrieving it when we want it, the rate at which the examiner can dispose of his applications must of necessity continue to fall. We are presently struggling with that aspect of the situation and have for the first time in the Patent Office a unit of research and development which is working with the Bureau of Standards and others to devise ways and means for storing information and retrieving it so that the examiner may be aided in that respect. Some 60 percent of the examiner's time is spent in the search.

I may say that we are making some progress in that direction and particularly along the line of chemical patents.

Of course, the dollar today is not what it has been.

So, all told, it seems unrealistic to us not to recommend that there be an increase in the schedule of fees which, as I have already stated, has not been altered since 1932 in any material respect.

The remainder of the statement is in the nature of a detailed analysis of the provisions of the bill. If you wish, I can discuss each provision in detail or I can leave it with a statement to the effect that the bill includes both patent fees and trademark fees.

I direct your attention to a paragraph contained on page 15 in which it is said that—

> The cost of all trademark activities, including the appropriate proportion of general activities of the Patent Office, averaged $922,206 per year during the years 1954–56. During this same period the receipts averaged $743,664 a year. If the proposed fee schedule had been in operation, the receipts would have been $1,124,615, which is greater than the cost of operation. As previously stated, however, about $154,000 of this annual amount would not be realized until after about 5 years have passed.

I have mentioned trademarks to say that by reason of economies effected by Mrs. Leeds in the operation of the Trademark Branch of the Patent Office and because of the provision for certain increases in this bill, that aspect of our operation will be on a full cost recovery basis. I will leave trademarks in that happy position and devote the rest of the time that you wish me to speak to the problem of the patent application and the fee which should be charged to those who patronize the Patent Office by seeking patents.

First a word about the overall situation. In evaluating the size of the fee which should be charged in the future we must of necessity look to the experience acquired in the past, and our calculations and prognostications are based upon an analysis of what actually happened during the fiscal years 1954, 1955, and 1956, and estimating what would have happened during those 3 fiscal years had the schedule of fees set forth in the bill under discussion been in effect at that time. Of the applications which were filed during those years, on the average 56 percent matured into patents and 44 percent became abandoned. We have no control over the number of applications which we receive and must process. When the inventor submits a formal application with the requisite fee it is up to us to dispose of it. The averages which I have quoted are from experience. More than half of the applications submitted eventually are allowed and appear as patents, and the remainder are abandoned. There is no other way in which an application may be disposed of. It must go one course or the other.

Mr. WILLIS. You use the word "abandoned." What do you mean by that? By action of your Department or by indifference or withdrawal of the application?

Mr. WATSON. It is both, I might say. In the usual case the applicant prosecutes his application as vigorously as he can to the point when it is finally rejected. He may take an appeal. It may go to the courts. He may lose out either in the Patent Office or in the courts, but eventually his application, we will say, becomes dead. Nothing more can be done by him. Then it is in an abandonment status.

Mr. WILLIS. I am very much interested in that. I do not wish to interrupt your trend of thought, but do I understand that on the whole applicants filing for a patent, in effect, for lack of a better word, have a 50–50 chance of getting a patent? That is the way it works out for all the reasons you have enumerated?

Mr. WATSON. That is a generally correct statement. The ratio of the number of applications which eventuate as patents to the number of applications which become abandoned varies somewhat from year to year, but our studies show that generally there is a greater chance that the applicant will receive a patent than there is that he shall

have his application finally rejected so it eventually becomes abandoned.

Mr. WILLIS. I marvel at the average in view of the strict decisions of the Supreme Court.

Mr. WATSON. We, of course, are guided immediately by other courts in the District of Columbia, but we are not unmindful of the rulings of the Supreme Court. I can say that over the years the Patent Office has been remarkably consistent in its treatment of the applications which it receives for processing and that it is probably a little more generous than the courts which act upon the patents once they leave the Patent Office door. That perhaps is explainable in that the proceedings before the Patent Office are ex parte and we are subjected to the pressure of the applicant and he presents his best case. This is not an adversary proceeding. So, as might be expected, we are perhaps a little bit on the generous side in the issuance, although, as I have said before, we are under the control of the courts and occasionally and more than occasionally the courts do overrule the Patent Office.

Mr. WILLIS. That would have to be on the application of the Department, though.

Mr. WATSON. No.

Mr. WILLIS. If a man wins out initially there is not likely to be a court review; is there?

Mr. WATSON. Unfortunately we do not have the last say on the question of patentability in the Patent Office, and the disappointed applicant can take his case either to the Court of Customs and Patent Appeals or to the District Court of the United States for the District of Columbia, from the decision of which court an appeal may be taken to the Court of Appeals of the District of Columbia.

Mr. WILLIS. I was approaching from a different point of view. If, on the other hand, your Office should agree that the application is worthy, that is the end of it. The other side is certainly not going to take an appeal from that.

Mr. WATSON. That is right.

Mr. WILLIS. So the attitude of your department is very influential and I think in the right direction.

Mr. WATSON. I agree perfectly.

I want to make the point here that when you consider the operation of the Patent Office in its entirety, the entire amount of money which it receives by way of appropriation and the entire cost of its operation, we find approximately this situation to exist: The average cost of disposing of a patent application, going back to the 3 years which I mentioned, 1954, 1955, and 1956, was $178. The average income which we receive from all sources—filing fees, final fees, payment for patent copies, recording, and so on—was $77. So that, during that period of time, those 3 years, regardless of whether the application was allowed and issued as a patent or whether it was finally rejected, the average loss per application disposal was $101. If the provisions of H. R. 7151 had been in effect during those 3 years the average income per disposal would have been increased from $77 to $115, and the average loss per disposal would have been decreased from $101 to $63. So it is apparent from those figures, and assuming a continuation of conditions such as those which obtained during the last 3 fiscal years, that even if this bill is enacted into law the Government will still,

you might say, subsidize the applicant by a sum equal to $63 per application received and disposed of.

Our losses in connection with applications which eventuate as patents differ from the losses incurred when the application becomes abandoned. I can make that fact of record. I do not believe it to be necessary to present this information orally at this time. I now simply intend to show that, at the present time, we are losing in our overall operation somewhere around $101 for each application which we receive and dispose of.

The bill, if enacted, will probably decrease the net loss per disposal, as I have said, from $101 to $63. Our income normally is mainly from the filing and final fees which we require the applicant and the successful applicant, respectively, to pay. Normally approximately 54 percent of the income of the Patent Office is obtained from those fees.

With respect to the filing fee the present law requires the applicant to pay $30. Section 1 of the bill would require him to pay $40, an increase of $10. Each applicant presently is required to pay, in addition to $30, $1 for each claim over 20 in his application as filed. The bill, if enacted into law, would require him to pay $2 for each claim presented at any time which is in excess of 5 claims in the case. If that section of the bill is passed there will probably be an increase in receipts by reason of the $10 flat increase in the filing fee of approximately $798,850. Our calculations are based on the volume of business done in the 3 preceding fiscal years, when we received from fixed filing fees $2,221,110. We would receive, if the bill became law, $3,019,960, giving the net increase which I have just mentioned.

Mr. MOORE. May I interrupt to ask, Mr. Watson, the increase reflected, $798,000, is projected over a 3-year period?

Mr. WATSON. No; that is per year.

Mr. MOORE. That is per year?

Mr. WATSON. Yes.

Mr. MOORE. I thought it was based upon the receipts for the 1954–56 period.

Mr. WATSON. We took the average of the 3 preceding fiscal years.

Mr. MOORE. Then the figures are on a per year basis?

Mr. WATSON. Yes. This would be the increased amount which we would have received had we collected $40 instead of $30——

Mr. MOORE. I now understand.

Mr. WATSON. Per year during each of the 3 preceding years. Then the receipts from claims under the present law is very small, amounting on the average during each of the 3 years in question to about $35,439, whereas if the bill recommended had been the law during that period which would have required the applicant to pay $2 for each claim presented at any time which was in excess of 5 claims in his case, we would have received $603,992, a net increase of $568,553.

Section 1 provides an increase of about 60 percent in the rate of charge to the applicant.

Taking up section 2, on issuing each original patent, except in design cases, $50 instead of $30 as heretofore, then $2 for each claim in excess of 5 instead of $1 for each claim in excess of 20 as heretofore. If this section of the bill had been in effect during the preceding 3 years the receipts would have been increased from $1,052,220 to $1,799.967, or a net increase of $747,747, on the average.

Mr. WILLIS. Mr. Commissioner, we have before us a very well analyzed effect of the bill, and I do not think we should expect to burden you as the head of the department with reciting all of the details. For my part I am interested in the grand result, the net effect, and I think that is carried out on page 16 of the statement. Under the present setup the total cost of the operation of your Office is $12,678,000.

Mr. WATSON. That was the average.

Mr. WILLIS. I am referring to page 16 of your statement. I think that analyzes it completely in my mind.

Mr. WATSON. Yes.

Mr. WILLIS. As against that, under your fee schedule today your receipts are $6,158,000.

Mr. WATSON. Yes.

Mr. WILLIS. So the schedule of rates produces 48 percent of the cost of the operation of the Patent Office.

Mr. WATSON. That is right.

Mr. WILLIS. Under the bill, assuming the costs still to be around $13 million, your receipts under the proposed schedule would be somewhat over $9 million, and that would be a ratio of 73 percent.

Mr. WATSON. That is right; an increase in receipts of over $3 million, 50 percent more.

Mr. WILLIS. As I gathered from your testimony on the cost per patent, I cannot quite make these figures jibe. You say presently you are losing so much per patent, which is over 100 percent. I cannot get the two comparisons. I completely miss the point.

Mr. WATSON. It is not the cost per patent but the cost per disposal. Fifty-six percent of our receipts, we will say, mature into patents, but the other 44 do not. Each application costs us money to dispose of it. Regardless of the success which the applicant realizes, each application is examined with the same care and the same costs go into it. It costs about $138 to process an application which becomes rejected.

Mr. WILLIS. The net effect, though, is that presently your department is 48 percent self-sufficient.

Mr. WATSON. Yes.

Mr. WILLIS. And under the bill it would be 73 percent self-sufficient?

Mr. WATSON. Yes. We want to raise the fees to bring in an increased return of $3 million on the basis of $6 million, making it about $9 million.

Mr. WILLIS. For whatever it may be worth, we can compare your department with any other department. The popular one in everybody's mind right now is the Post Office Department. So you are more self-sufficient than the Post Office Department. We can put it that way.

Mr. WATSON. I cannot be sure of my reply there, Mr. Chairman.

Mr. WILLIS. That does not disturb me at all. So far as I know there is only one agency of the Government that is self-sufficient and that is the Treasury Department. That is a fact of life. The Justice Department is certainly not self-sufficient. The Agriculture Department is not. You can go down to all agencies of the Government and there is only one that produces the "dough" and that is the Treasury Department. This bill, however, by increasing the sched-

ule would not produce 100 percent self-sufficiency. I do not think the public would stand for that. I do not think I would go for it, either. But you are trying to be slightly closer to self-sufficient than you are today by virtue of these new schedules.

Mr. WATSON. That is a fact. The bill does not attempt to place the Patent Office on a full cost recovery basis. It simply contemplates the facts of life in other respects, namely, the depreciation of the dollar, the increased cost of doing business, and the fact that everything else has gone up in price, and tries to make our schedule a little more realistic.

Mr. WILLIS. And you have not had a rate increase or a cost increase since the early thirties?

Mr. WATSON. Since 1932.

Mr. WILLIS. What percentage of your total cost of operation is attributed to salaries?

Mr. WATSON. About 77 percent. We have had since 1932 six salary raises as the statement points up.

Mr. WILLIS. And the 2 salary schedules that you talked about, 1 had to do with examiners and the other the average, I think, showed an increase in salaries of something like 100 percent since the early days?

Mr. WATSON. Yes; more than that.

Mr. WILLIS. So the question is whether something should be done?

Mr. WATSON. That is right.

Mr. WILLIS. Let us leave degree aside for the time being. The question is whether we have reached the time when there should be a reevaluation of the policy which is set by Congress as to how much the people should pay for processing a patent.

Mr. WATSON. That is it.

Mr. WILLIS. As I recall it, 2 years ago we had hearings in the same direction we are talking about today. We heard both sides.

Then last year this subcommittee approved, and the full committee approved, an increase in the cost of processing patents.

I will tell you what happened. After the full committee acted we got news somewhere that if we modified the bill slightly that the patent associations and industry generally would be fairly satisfied.

I had to recall the bill, move for reconsideration, the subcommittee agreed with me, the full committee agreed with the subcommittee, we redrafted the proposal to a point that we thought would satisfy industry—we cannot satisfy industry or Government wholly, I think, and there must be a compromise somewhere down the line—and that bill went on the floor.

I think we made the mistake of not asking for a rule. We tried it by unanimous consent during the last days of the session thinking that industry and Government would more or less be together. There was objection made and that ended it.

Generally speaking, do I understand that this bill modifies our last modification in some way? In other words, the increase, as I see it, is slightly more than the, shall we say, attempted compromise at the last minute last year?

Mr. WATSON. The difficulty experienced in connection with the predecessor bill seemed to me to center around the charge which we had proposed based upon the number of pages of drawings and the number of pages of specifications.

The number of sheets of drawings, the number of pages of specification, pages which the specification contains, are indications of the difficulty which the attorney has experienced in describing the invention and some indication of the nature of its complexity.

We had originally proposed a charge based only on the claim—$5 for each claim over 5. That was thought to be excessive, and on reconsideration we ourselves agreed that that would probably overtax some applicants.

Then we proposed to make the charge $2 per claim over 5, and to add to it, to replace the sum which would be lost by reducing the amount from $5 to $2, a charge on pages of specification and sheets of drawing. That alternative proposal, which your committee adopted upon my recommendation, proved to be very unpopular in the patent bar. The attorney did not wish to have the duty of estimating in advance, when the client came into his office, how many pages he was going to use in drafting a proper description of the invention and how many sheets of drawings would be required, so that charge was ultimately disapproved by most of the bar associations. That is my recollection.

What you want to know is whether the present bill is noncontroversial so far as the bar associations are concerned?

Mr. WILLIS. I do not ever envisage 100 percent enthusiasm anywhere, but how close are you?

Mr. WATSON. I wonder myself how close we are. This bill in its present form has not had the lengthy considerations by the bar association that the prior bill had.

I will venture this remark: That in the main the bar associations and other interested parties seemed to be willing to go along with the prior bill, if modified, so that the charge on claims, on the application filed, amounted to $2 a claim over and above 10 claims.

Now we have it in the bill that the charge is to be $2 a claim over 5 claims, so that there is a hiatus between the recommendations of the bar associations advanced in the prior hearings and what the present bill provides.

How seriously the gentlemen who represent these bar associations are going to take that difference between 10 claims and 5 claims I really do not know. I hope that they will back the bill.

Mr. WILLIS. How much in appropriations did the Patent Office receive in the current 1957 fiscal year?

Mr. WATSON. $17 million for this fiscal year.

Mr. WILLIS. How much of an increase was that over the previous year?

Mr. WATSON. $3 million, as it was $14 million the previous year.

Mr. WILLIS. In 1956 you got $14 million, and in 1957 you got $17 million?

Mr. WATSON. That is right; and in 1958 it will be $19 million.

Mr. WILLIS. Has that been processed through the Congress?

Mr. WATSON. Yes, sir.

Mr. WILLIS. On both sides?

Mr. WATSON. Yes. I am assured that the act has been approved.

Mr. WILLIS. I will say this to you: There are some Members of Congress who oppose an increase in rates but who felt you should have more money. You know the frank discussion we had and you know the members I am talking about in the Appropriations Committee. They did come across to some extent, anyway; didn't they?

Mr. WATSON. They came across in a very generous manner, and those who are responsible for the operation of the Patent Office are extremely grateful.

Conditions are improving in the Patent Office. We are building up our staff by the addition of competent young men, insofar as it is possible for us to get them in competition with industry, upon the basis of the salaries which we are permitted to pay.

We are training the young men. Our plan to make the Patent Office current in its operation is slowly taking shape.

We must first get the men, then train them, and then the backlog will come down to the point where we think we shall be able to promptly reply to an applicant when he presents his application or his amended case or any argument, and reduce the time of pendency very greatly.

That is our objective, and I am very happy that the Congress has seen fit to implement that by giving us adequate appropriations.

We do have great difficulty in securing the necessary examiners who must be engineers, and the competition for the services of young graduate engineers is very, very great. The Government is under considerable handicap because of the salary scales which are not comparable to those which the corporations can afford to pay.

Mr. WILLIS. I know that is a great problem in all fields of our Government. It is a very serious problem.

Mr. MOORE. I have no questions.

Mr. WILLIS. Is there any member of your staff you wish to have called at this time?

Mr. WATSON. I have them all here. They would all like to talk, I am sure, and they are very competent. We have a very fine staff in the Patent Office.

I would like to be guided a little bit from you before I start calling them.

Mr. WILLIS. I have been here 10 years, and I will say publicly, as I always do, that I regard you as one of the most efficient heads of an agency in our entire Government. Although I do not deal with the others individually, that efficiency must be reflected down the line.

Mr. WATSON. Mr. Chairman, you were very kind to me when I appeared here 2 years ago, and I never adequately thanked you. I want the record to show I am very grateful to have you say that, and I think—perhaps I should not say this—that there will be differences of opinion on that point as on all others.

Mr. WILLIS. I think it would be better to hear from industry next, and then, if some members of your staff can remain with us, we will try to reduce the points of differences to where even Members of Congress can understand them.

Mr. WATSON. We will be right here and ready to testify again on any point, if you will call us.

Thank you very much.

Mr. WILLIS. We will hear next from Mr. Cyr.

## TESTIMONY OF ARMAND A. CYR, DIRECTOR OF LEGISLATIVE RESEARCH, NATIONAL PATENT COUNCIL

Mr. CYR. Mr. Chairman, I have a very short statement.

Mr. WILLIS. You may proceed with your statement, Mr. Cyr.

Mr. CYR. My name is Armand A. Cyr; I am director of legislative research for National Patent Council, Gary, Ind., a nonprofit organization of smaller manufacturers dedicated to the defense and enhancement of understanding and appreciation of our American patent system.

I am also a member of the American Patent Law Association. I am a patent lawyer, having engaged in the private practice of patent law for over 25 years. I am therefore familiar with the damaging effects enactment of this bill would have upon the flow of new inventions considered necessary for the advancement of our economy through a continuous development of new and improved products.

To increase Patent Office fees would have a discouraging effect on inventors, and would tend to dry up the source of inventions and reduce taxable patent income.

In considering this legislation, the subcommittee should realize that Patent Office fees are only a small part of the monetary return to the Government from patents. Every patented invention is a potential source of considerable revenue to the Government through employment, and through income taxes on royalties and on new businesses created by such patented inventions. If, through this legislation, we discourage the development, production, and patenting of a single important invention in half of the 48 States, the Government stands to lose in revenue many times the amount that might be gained through the proposed increase in Patent Office fees.

Most of the available taxable income of this country can be traced to industrial development based upon patented inventions. Without the inducement to invent and patent, most of the important inventions would never have been made.

Because of the farsightedness of members of the Appropriations Committee of Congress, the Patent Office is well along on its program of reducing its present backlog of pending applications and modernizing its facilities for more efficient and expeditious examination of pending applications and issuance of patents, to the end that the cost of operation of the Patent Office may well be considerably reduced in the near future. This is attested to by the Under Secretary of Commerce, the Honorable Walter Williams. At the hearings on June 3 and 17, 1955, on a bill somewhat similar to H. R. 7151, the Under Secretary told the House Judiciary Committee about the investigations of the Patent Office made by the Technical Committee headed by Dr. Vannevar Bush and stated:

> We can see out of that Vannevar Bush Committee report a lot of gain to be had. I think without question when their findings are applied to the operation of the Department over a period of time I can feel rather sure, and we feel rather sure, that they are going to be followed by distinct benefits in terms of efficiency *and therefore cost of operation.* [Emphasis ours.]

It is recognized that new inventions are vitally essential to our industrial progress and likewise to our national security. It has long been demonstrated that the mainspring moving to new invention and industrial progress lies in our patent system. Inventors are inspired by the possible rewards and protection against copyists that a patent affords. The narrow margin of balance often found between meeting the cost of obtaining a patent or dropping the whole idea appears to be the crux of the matter of higher patent fees.

To raise fees in the Patent Office would soften our industrial muscle by suppressing to a degree the incentive to invent. Patent attorneys

report that some inventors recently have dropped "worthwhile" projects simply because of the increasing costs involved. This is another example of the wisdom of the saying that, "In applying pressure to the goose that lays the golden eggs, the neck should be avoided."

Proponents of this legislation cannot successfully argue that increases in Patent Office fees are necessary to maintain a high level of appropriations to continue and improve Patent Office operations. Recent congressional action clearly indicates that adequate Patent Office appropriations are not dependent on Patent Office fees.

Members of the Patent Office Appropriations Committee who appear to be well versed on the function of our patent system as an incentive to produce inventions and thus contribute to the industrial growth and security of our Nation, have expressed their views on the question of increases in Patent Office fees. For example, Representative Prince H. Preston, Jr., of Georgia, chairman of the Subcommittee on the Department of Commerce and Related Agencies (Patent Office) Appropriations, at the hearings on the Patent Office appropriations in 1955, stated:

> I am opposed to this concept that Federal service agencies must pay their own way. I do not agree with it in the Post Office Department and I do not agree with it in the Patent Office. The American taxpayer pays enough taxes to receive some services from the Government without being charged for everything the Government does for him. * * * But the American public is the beneficiary of all great patents filed during the year. That is the thing that has made America great and strong and produced the incentive to expand.

The benefits the public receives from inventors, including the direct benefit of public dissemination of technical knowledge, are so great that cost recovery is not a proper basis for Patent Office fees. Any increase of these fees might hinder the free flow and dissemination of knowledge which has proven to be of great assistance in elevating our standard of living and improving our economic and defense position as a Nation.

Dr. Vannevar Bush pointed out in his report on Proposals for Improving the Patent System, submitted to the Senate Committee on the Judiciary in December 1956, that the patent system was not set up primarily to produce rewards to inventors but was set up to produce a public benefit by accelerating technical progress, and the reward of the inventor is only one aspect of its operation. Also in that report, in discussing a more adequate Patent Office examination and improved classification of patents, Dr. Bush made the following statement:

> Moreover, the necessary additional money should come from public funds and not from inventors' fees. This is a matter of public responsibility. The cost of patent administration cannot be made primarily the responsibility of the inventors through patent fees without unduly burdening many worthy inventors.

That "upward thrust of inventiveness" depends on the inventor, whether he works in a plush laboratory or a basement workshop. It is the inventive muscle of the inventor that powers the wheels of industry. The accessibility of the Patent Office, through which inventive muscle is encouraged and rewarded, is highly important. Congress should think more than twice before urging the raising of fees, thus jeopardizing the incentive provided by the patent system. The public, out of its general tax funds, could well afford to pay all the costs of operating the Patent Office rather than discourage, by

increased fees, a single inventor capable of creating one product widely useful in civilian service or in military defense.

Some associations and some individuals, representing large corporations, have expressed approval of increases in Patent Office fees. This is understandable, since increases in fees are no deterrent to the filing of applications for patent by large corporations. However, any increases would place a relatively greater burden on the source of most commercially important inventive contributions; namely, the individual inventor and small business.

A popular misconception is that inventions come primarily out of large research organizations. Such large organizations usually deal with basic research and, of course, are invaluable in the general scheme of our economy. However, it is a fact, known well to those in intimate and continuous contact with the field of invention, that the applications of the findings of such research, to useful purposes, are not made primarily by those engaged in that basic research. There are many examples—in many fields. The discovery of electricity produced one such field. The discovery of steam as a confinable source of power produced another field. Now atomic energy, unquestionably the result of profound basic research, is advancing toward usefulness to the peoples of the earth through the efforts of individual inventors.

If large corporations were going to pay all of the fees of the Patent Office it might be in line with some modern economic philosophy to burden their Patent Office fees with what would amount to extra taxes flowing into the general universally expendable funds of the Government, thus merely to add to the already heavy tax burdens of corporations. However, since the burden of any increase in Patent Office fees would fall primarily upon the individual inventor or his immediate friends, why assert such a depressive influence upon invention? Why pressure the neck of the goose that has laid the golden eggs of invention that have given us our strength for better living and for national defense?

Mr. John W. Anderson, founder and president of National Patent Council, has collaborated in the development of this statement and wants it understood that he approves the statement in full, as affecting the interests of not only the smaller manufacturers of America but of all the people of the Nation.

Mr. WILLIS. Thank you very much, Mr. Cyr. You have made a very fine statement from the point of view that you espouse. I refer to a sentence on page 3 of your statement, first paragraph:

> Patent attorneys report that some inventors recently have dropped "worthwhile" projects simply because of the increasing costs involved.

I think you are here pointing to costs before filing the patent.

Mr. CYR. Yes, sir; and including cost of preparation of an application and filing fees, of course. That would be included.

Mr. WILLIS. Do you know, and are there available, figures—which I suppose would have to be average figures—indicating the cost of a patent, the cost of initiating a patent, before its filing and then the cost to process it from then on percentagewise?

Mr. CYR. That would vary so widely in different cases depending upon the nature of the invention itself. If you had, say, an invention which would require 4 or 5 sheets of drawing to illustrate, the cost of that application would be far beyond that of another case where you

had only 1 sheet of drawing which would be sufficient to illustrate that invention.

Mr. WILLIS. What are some of the prefiling costs?

Mr. CYR. That normally would include the cost of a search—and I assume now that the invention already has been made and the inventor comes to a patent attorney. You are not referring to the development cost of the invention; are you?

Mr. WILLIS. No.

Mr. CYR. The first step probably would be to have an examination made of the Patent Office records to determine whether his invention is——

Mr. WILLIS. No. I want the cost before that point.

Mr. CYR. Before?

Mr. WILLIS. Yes.

Mr. CYR. That would be the development cost of the invention.

Mr. WILLIS. What do you mean by development? You mean the preparation of a model, for instance?

Mr. CYR. Yes; that might include the making of a model.

Mr. WILLIS. I did not know that that would be categorized as a development cost. I understood it to be in the nature of a promotional cost.

Let us get those costs before we go to the Patent Office. One item would be, for instance, the preparation of a model?

Mr. CYR. In some cases, yes.

Mr. WILLIS. Give me others that come to your mind.

Mr. CYR. I would not be qualified to give any accurate statement on that because I have never in my life made an invention myself. Therefore I do not know what the inventor would go through in, say, the conception of the idea and the development of the idea to, we will say, the completion of it.

Mr. WILLIS. I am being very serious and very kind. I do not want to be caustic, sarcastic, or anything else. I am taking your sentence at face value because it struck me with this new idea of trying to find out costs involved before filing.

What I would like to find out, and it would be interesting for Congress to know, is what percentage of the total cost is attributable to filing fees, and so on, and how damaging would this bill really be to total costs percentagewise?

Mr. CYR. That would be very difficult to answer. I do not feel qualified to answer that, Mr. Chairman.

Mr. WILLIS. Those costs, whatever they are, naturally have increased?

Mr. CYR. Yes.

Mr. WILLIS. I am a lawyer myself, and we are all in the same boat, wanting to make a living. It is true that attorneys' fees have, by and large, increased since 1932. We all admit that.

Mr. CYR. Yes, sir.

Mr. WILLIS. I am just wondering what the percentage of the cost is from the birth of the idea through putting it into a model, hiring a lawyer, breaking it at that point, and then taking the other side, what the Government's fees are. It might be interesting to get that percentage and how much damage might result.

I know you are sincere in your ideas, and many other—my good friend Mr. Lanham is here—people representing small business feel

as you do. I do not think I can be accused of being large corporation minded in view of my membership on the Subcommittee on Monopoly Power. It would be a good idea to get those figures.

Mr. Moore?

Mr. MOORE. I have no questions.

It is very odd, Mr. Chairman, that you would pick out the one paragraph that I had underlined in Mr. Cyr's statement. It was interesting to me on what basis he predicated the statement that patent attorneys had reported that many worthwhile projects had been terminated or dropped because of rising costs.

Certainly in this bill, where we contemplate increasing filing fees, that could not have been a basis for the statement.

Mr. CYR. I know from my own experience in Gary, Ind., which is a mill town, and the people there are dependent entirely on the salary of the mills, they suffer. I know in several occasions they have approached me, said they had an idea, and would like to get a patent on it.

Once you quote the fees they might say, "I will have to wait until I can get enough money to go ahead with the patenting of the idea."

Mr. MOORE. In those instances where you are quoting fees you are then including the present fee schedule of the Patent Office?

Mr. CYR. Yes, sir.

Mr. WATSON. Might I make one remark, Mr. Chairman?

Mr. WILLIS. We will be glad to hear you.

Mr. WATSON. Simply to call attention to the fact that when you held a hearing 2 years ago Mr. Cyril A. Soans appeared here to testify. Mr. Soans presently is chairman of the section of patent, trademark, and copyright law of the American Bar Association.

He devoted a portion of his testimony to an analysis of the costs in which you are interested. His statement appears beginning on page 39 of the record of hearings of Subcommittee No. 3 on June 3–17, 1955.

I direct your attention particularly to that portion of his statement which appears on page 44 which I think you will find very interesting.

Mr. WILLIS. Is that 1 of 2 paragraphs only?

Mr. WATSON. Yes. My attention was just called to that statement of Mr. Soans.

Mr. WILLIS. I think it is only two very short paragraphs. Let us quote it. I do not know yet what it will say.

> As a matter of fact, the patent fees are a relatively small percentage of the money spent by an inventor, or the inventor's assignee, in obtaining the patent. When I started to practice in 1913 the fees were $35 for the filing of the application and for issuing the patent. That is all the inventor paid.
>
> Now I won't tell you what our fees were for the legal work but I can tell you the Patent Office fees represented one-third of the total expense of obtaining a small patent at that time.
>
> In 1932 the patent fees were raised to $60 and then for the same kind of patent which we would have in our office the fees would represent about 20 percent of the total amount paid by the inventor for his patent.
>
> At the present time—

and he is now speaking of 1955—

> in the average case for the normal patent, the small patent I am referring to, the Patent Office fees are less than 10 percent generally of the cost of obtaining the patent, and often less than 5 percent.

What study he devoted to the problem to justify that statement I do not know.

Mr. Morton, we will hear you next.

## TESTIMONY OF W. BROWN MORTON, JR., MEMBER OF THE BOARD OF GOVERNORS OF THE NEW YORK PATENT LAW ASSOCIATION

Mr. MORTON. I am appearing here in lieu of Mr. David Kane, who is chairman of a committee on patent law and practice of the New York Patent Law Association. I am vice chairman of that committee and I am also a member of the board of governors of that association, as is Mr. Kane.

We had the matter of this bill submitted to the board of governors recently. Two members were absent in Europe. One member voted not to oppose. Everyone else voted to approve. Therefore I am here to express the view of the New York Patent Law Association board of governors and the association for which they speak, and the bill should be adopted.

There is no need for me to amplify what Commissioner Watson has said but simply to endorse it. He knows a great deal more about the details of the operation of the Patent Office than I or any members of our board.

It seems to me it would be more helpful if I undertook to point out that we also had available to us at the time we endorsed this the position of the National Patent Council, whose representative just spoke.

We do not believe that the fears expressed by the National Patent Council are justified.

In the first place, as Mr. Soans' remarks which the chairman just read indicate, history indicates that the percentage of costs for obtaining patents which is attributable to Government fees has constantly declined.

As a matter of fact, prior to 1932, for many years, the Patent Office was a self-supporting agency completely, nearly completely, and during those years were the times when the individual inventor's efforts brought a great deal larger volume in the percentage of patents issued than now.

The filing fee increase is a very moderate one. It is $10. The proposed claims increase seems to us also to be moderate, and to the extent that it has the effect of reducing the multiplicity of claims in the patent application it would contribute to improving the quality of patent documents.

I may point out, incidentally, that individual inventors almost never file patent applications except in the expectation of obtaining substantial rights thereby, whereas many large businesses engage in the practice of filing patent applications with the idea of keeping the Patent Office adequately informed so that no other person coming later will obtain a patent inadvertently through lack of information on the part of the Patent Office. So that, to the extent the filing of patent applications is not in the expectation of obtaining valuable rights but as a protection, it might be that an increase in filing fee would be a deterrent. I doubt that a $10 increase in filing fee would

be a deterrent to anyone who expected to obtain valuable rights through the granting of a patent.

As the chairman indicated, the cost of professional advice in obtaining a patent is a very substantial cost. I am sure the chairman is aware that the cost of that advice has kept pace, generally speaking, with the cost of living; so that the percentage of the total fee paid by an inventor that is payable to the Patent Office, whose fees have not been increased since 1932, has decreased substantially.

I happened to ride up from the board of governors meeting, at which this bill was approved, with another member of the board of governors who expressed to me that the total filing fee of $40 now asked would not amount to more than 10 percent of the initial cost of preparing and filing a patent application under today's conditions for what you might call minor patents, in that the amount of time required is not great. Such patents may be very profitable.

I think Mr. Soans' figures are in accord with my experience and the experience of other members of the board of governors, and I feel also that it is quite likely that the continuing support of the Patent Office by some Members, at least, of the Congress, has been predicated on the notion that the patent system itself shall generate some of the cost of the Patent Office so generously appropriated for by the Congress.

Therefore, I recommend, on behalf of the New York Patent Law Association, that the subcommittee report the bill favorably.

Mr. WILLIS. Thank you very much.

Mr. Neuhauser.

## TESTIMONY OF FRANK L. NEUHAUSER, CHAIRMAN, COMMITTEE ON PATENT LEGISLATION, AMERICAN PATENT LAW ASSOCIATION

Mr. NEUHAUSER. Mr. Chairman and members of the subcommittee, my name is Frank L. Neuhauser, and I have been designated by the board of governors of the American Patent Law Association to appear and present the views of the American Patent Law Association on this bill. My capacity in the American Patent Law Association is chairman of the association's patent legislation committee.

I have already filed with the subcommittee a statement which fully presents the position of the association, and I see no reason why I should take the time of the subcommittee to read that in full. I shall merely refer to a couple of points in that statement.

The first point is that the American Patent Law Association has been on record since 1953 as being willing to support a reasonable increase in Patent Office fees. We recognize the greatly increased expenses of the Patent Office and the decrease in value of the dollar, and both of those factors would seem to indicate an increase in Patent Office fees.

Secondly, the American Patent Law Association has for several years urged increased appropriations for the Patent Office so that it could operate more promptly and efficiently, and Congress has seen fit to increase its appropriations substantially in the last 2 years. It is our feeling, also, that Congress assumed some relationship between increased appropriations for the Patent Office and some reasonable increase in fees. Therefore, the board of governors felt it was a matter

of keeping faith with Congress to reaffirm the position the association took in the hearings in 1955 as a result of a referendum at that time of the members of the association. At that time the membership approved an increase in filing fee to $40 and in final fee to $50 and in reissue fee to $40.

The only major differences in the position then taken by the association and reaffirmed now and H. R. 7151 is that in the trademark area it approved $30 rather than $35, as in this bill. And in the patent area the referendum approved $2 for each claim in excess of 10 rather than $2 for each claim in excess of 5 as in the present bill.

Mr. WILLIS. Have you any thoughts on the percentage of cost to the inventor attributable to that portion up to the filing of the application with the Government and thereafter, as was developed by the last witness?

Mr. NEUHAUSER. I do not know that I have any immediate factual information I could draw upon. However, I feel reasonably sure from my own personal experience that the statements by Mr. Morton and Mr. Soans are roughly correct. I have nothing I could say as to what it would cost the inventor to draw his plans, make development samples, and so forth; but as far as percentage of Patent Office fees to total application cost, I would think the Patent Office fees would be a relatively low percentage. I recall that for interdepartment charging purposes in one corporation the rough cost from filing to ultimate issuance of a patent, including Patent Office fees, was estimated at $600, $800, and $1,000, based upon degree of complexity of the subject matter. These were somewhat arbitrary bookkeeping figures and were not accurately kept as to time actually spent, and so on, but they are indicative of the percentage of cost attributable to Patent Office fees. I think other witnesses engaged in private practice might be able to give you a much more accurate estimate.

Mr. MOORE. Actually, your statement is not based on any new referendum on the $35 rather than the $30 that you were in favor of in the previous bill; or the $2 for each claim in excess of 10 as opposed to $2 for each claim in excess of 5 in the present bill. Is that correct?

Mr. NEUHAUSER. It is not on the basis of a new referendum. It is a reaffirmation by the board of governors of the position taken by the association on the basis of the previous referendum. In that referendum, which is reported in the hearings on H. R. 4983, there were considered several alternatives, one of which was the fee schedule in the bill as originally filed, which was, in the case of filing fee, $40 plus $5 for each claim over 5. Another one was $40 plus $2 for each claim over 5; and the third was $40 plus $2 for each claim presented in excess of 10. It was the third plan which was, by a large margin, supported by the referendum. The other two were defeated in the referendum.

Mr. MOORE. And you are not giving us the position of your association with reference to the proposal to increase the trademark fee to $35 and the proposal to charge $2 for each claim in excess of 5; you are not giving us the position of your association today with reference to those 2 features of the bill?

Mr. NEUHAUSER. It is the position of our association, as taken by the board of governors. They voted to reaffirm the exact position shown by the 1955 referendum, which includes the position of $30 on trademarks and $2 for each claim over 10. This is not based on any new referendum of the membership, however.

Mr. WILLIS. Thank you very much.

(The following statement was submitted for the record:)

STATEMENT BY FRANK L. NEUHAUSER, CHAIRMAN, COMMITTEE ON PATENT LEGISLATION, AMERICAN PATENT LAW ASSOCIATION

My name is Frank L. Neuhauser. The board of managers of the American Patent Law Association, 802 National Press Building, Washington 4, D. C., has designated me, in my capacity as chairman of the association's patent legislation committee, to appear before this subcommittee and report to you the position of the American Patent Law Association with respect to H. R. 7151.

The American Patent Law Association is a national organization founded in 1897 and presently having a membership of over 2,000 lawyers from all sections of the country specializing in the practice of patent and trademark law.

On June 17, 1955, Mr. Richard K. Stevens, in his capacity as chairman of the American Patent Law Association's special committee on Patent Office fees, appeared before Subcommittee No. 3 of the Committee on the Judiciary of the House of Representatives and reported the results of a referendum of the association membership with respect to H. R. 4983, then being considered, and with respect to two alternative plans. At that time, the results of the referendum showed a substantial majority of the membership willing to support a fee schedule similar to that suggested in H. R. 4983 but differing principally in the amount to be charged for excess claims and in the maximum number of claims permitted without any excess charge. More specifically, the association membership at that time was willing to support a modified plan which called for filing fee of $40 and a final fee of $50 but with a charge of $2 for each claim in excess of 10. H. R. 4983, like present bill H. R. 7151, provided a charge for each claim in excess of 5; the charge in H. R. 4983 was $5 per claim whereas the present bill proposes $2 per claim.

The American Patent Law Association has been on record since 1953 to the effect that it would not oppose a reasonable increase in Patent Office fees. The board of managers has considered H. R. 7151 and, while unwilling to approve the schedule of fees set forth therein, it has voted to reaffirm the position shown by the aforementioned 1955 referendum. That is, it would support a bill which provided a filing fee of $40 for patent applications, a final fee of $50, and a reissue fee of $40, with the additional provision of a charge of $2 for each claim in excess of 10, and a trademark filing fee of $30.

The American Patent Law Association has, of course, long held the position that patents provide a benefit to the public by their beneficial effect on the economy and that, therefore, it is appropriate that the public bear some of the expense of maintaining the Patent Office. Hence, the association does not feel that the fees charged by the Patent Office should be established on the basis of making the Patent Office self-supporting. However, it is the understanding of the association that the fees proposed in this bill are not established on that basis; that they will merely add to the revenues from the operation of the Patent Office but not eliminate the necessity of substantial appropriations for the operation of the Patent Office. Since the Patent Office fees have not been increased in the major areas since 1932 and since the costs of operation of the Patent Office have materially increased and the intervening inflation has materially reduced the real value of the sums involved, it seems appropriate that a reasonable increase in Patent Office fees should be considered.

The American Patent Law Association in the past several years has urged increased appropriations for the operation of the Patent Office in order that those operations may be conducted more effectively and made more current. Congress has substantially increased the Patent Office appropriations for this purpose in the last 2 years. The board of managers of the American Patent Law Association at its meeting on June 6, 1957, in reviewing the appropriate action to be taken with respect to H. R. 7151, considered this matter of increased appropriations to the Patent Office. The board felt that it was a matter of keeping faith with the Congress to support fee increases of the magnitude approved in the aforementioned 1955 referendum now that Congress has seen fit to substantially increase Patent Office appropriations. On the assumption that Congress holds the view that there is a relation between increased appropriations for the Patent Office and some increase in Patent Office fees, the board of managers voted to reaffirm the position which it took in the aforementioned 1955 hearings.

Therefore, the American Patent Law Association does hereby reaffirm the position taken by its representative, Mr. Richard K. Stevens, in a statement to

Subcommittee No. 3 of the House Committee on the Judiciary on June 17, 1955, in connection with H. R. 4983.

Mr. WILLIS. Commissioner Watson, may I ask you this question?

## TESTIMONY OF HON. ROBERT C. WATSON, COMMISSIONER OF PATENTS—Resumed

Mr. WATSON. Yes, sir.

Mr. WILLIS. It just occurs to me—it is probably worthless and I do not know that you are prepared to answer it, but without giving your opinion on it if you do not care to, let me ask you this simple point. We have, under all State laws and under Federal laws, of course, pauper's oath litigation. Let us not use that word. Has any consideration been given to trying to put in form of law or regulations that the present fees would not apply in cases of individuals who took an oath of, let us say, a hardship oath? Let us not even say, "inability to pay." Has that been studied in the past? If you want to express an opinion now for the future, you may do so.

Mr. WATSON. It has been studied in some of its aspects. Mr. Federico, who is immediately behind me, for instance, developed a proposal of that general nature when the problem of full cost recovery was before us and the matter came up of the possibility of adopting a renewal fee to be imposed upon a person who had received a patent and who wanted it to remain in force, the patent to lapse if the fee were not paid. Then the question came up as to what that fee should be. Various members of the bar association expressed the view that that was not exactly the American way of doing business, that the man had paid for his patent and should not have the further obligation to pay renewal fees.

We discussed a proposal at that time which would have permitted a person faced with the need to pay such a fee to file an affidavit to the effect that he had not received any income from his patent for 4 or 5 years, whereupon we would remit the fee. Then the next time the matter of renewal came up, if he were still unable to pay and had received no income he could file another affidavit to that effect and we would again remit the fee.

Other than that, I know of no effort that has been made in regard to persons with insufficient funds.

Mr. WILLIS. Thank you.

We are glad to have our former colleague and a very good personal friend of all the committee members, Fritz Lanham.

## TESTIMONY OF HON. FRITZ G. LANHAM, REPRESENTING THE NATIONAL PATENT COUNCIL

Mr. LANHAM. Thank you very much, Mr. Chairman.

Mr. Chairman and members of the subcommittee, my name is Fritz G. Lanham, and I represent the National Patent Council, a nonprofit organization of smaller manufacturers devoted to the preservation, the protection, and the promotion of our American patent system. And let me remind you that such small-business enterprises in many instances are absolutely dependent upon patents of independent inventors for their profitable operation. We prate much and perhaps do little to help small business, and now we face a

proposal to weaken it still further by impairing the incentive of independent inventors upon whose discoveries small business is so largely based. I feel, therefore, that I speak for small business and for the humble folk of our Nation who have contributed and, properly encouraged, will continue to contribute by their discoveries to the progress and prosperity of our country.

First let me say that you have been hearing from lawyers, for whom naturally I have a high regard, and from the representatives of corporations which would not be seriously hampered however high the Patent Office fees might be made. This bill is not a matter of great consequence to them. But what about the so-called little fellows, the independent inventors, who have been responsible for so many of our basic discoveries? They are the ones to be seriously affected by this bill, the ones whose incentive will be impaired and perhaps sometimes destroyed if this proposal should be enacted. They probably do not even know that this hearing is being held. Wouldn't it be a wise policy to get their reaction to this measure so vital to them before reaching any conclusion harmful to their interests? After all, in very large measure our progress, industrially and otherwise, depends upon them. My service for 25 years as a member of the independent Committee on Patents of the House of Representatives taught me much in this regard, and prompts me further to oppose what I consider an unjustified legislative proposal.

I wish to discuss in particular two of the principal objections to the enactment of this bill. The first is that it involves an unwarranted departure from the principle upon which the constitutional provision with reference to patents is predicated and, secondly, it diminishes the incentive of independent inventors to continue their labors to add to the advancement of our country along all lines of worthy endeavor.

By way of illuminating preface, I wish to call your attention to a bill to increase fees of the Patent Office which was introduced and considered by the Committee on the Judiciary in 1947. Fortunately, and, in my judgment, wisely, the committee did not report that bill.

May I say here that I was somewhat surprised at the testimony offered today by the American Patent Law Association. I wonder what accounts for its change of mind? I have before me a copy of the testimony of the American Patent Law Association in opposition to that bill, very similar to this one, which was pending in 1947. The synopsis says:

> The American Patent Law Association opposes the passage of H. R. 2520—

which was a bill similar to the one here under consideration—

> as being contrary to the constitutional principle of promoting science and the useful arts, unfair to the individual inventor and small-business man as compared to large corporations, ill advisedly making the Patent Office a revenue-raising agency, and contrary to current efforts to reduce the cost of living.

And in amplification of that synopsis the American Patent Law Association then offered arguments in opposition to such legislation which, in my opinion, were unanswerable then and are unanswerable now. I think it would be wise for the members of this committee to go back and look at the record of those hearings and see the testimony introduced; and based on it the committee at that time did not report a bill of this character.

With reference to that bill in 1947, the Secretary of Commerce stated in his letter submitting the measure:

> The purpose of the proposed legislation is to place the Patent Office on a wholly self-sustaining basis.

In the first place, I think that statement bespeaks a lack of knowledge of the fundamental purpose of our patent system. The bill before you is a step in the same direction as the Secretary recommended then and now.

Before differentiating the Patent Office in this respect from other governmental departments and agencies, let us consider how far afield that suggestion is from the evident constitutional intent. Our Founding Fathers were well educated men who knew the English language and understood the meaning of words. Let us look at the provision they placed in the Constitution. It is a paragraph of section 8 of article I of the Constitution:

> The Congress shall have power to promote the progress of science and the useful arts—

and how is this to be accomplished?

> by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.

I call your attention to that word "securing." It does not mean "procuring." What does it mean to secure something? I quote the dictionary definition of "secure," which ought to enlighten us. Here it is:

> To make secure; protect; guarantee; to get safely in possession.

The security of our country in very large measure has come from the security to the inventors as prescribed in the Constitution of the United States.

I do not see how that important word could possibly be construed logically to make it mean that the Patent Office, unlike other Government departments and agencies, should be wholly self-sustaining or that restrictive limitations should be placed upon our benefactors of small means which could under any circumstances impair or deny them the security, the protection, the guaranty to get safely in possession of desired patents for their discoveries useful to our country.

Let us look at the record in this regard. On March 12, 1947, the very day the bill recommended by the Secretary of Commerce to increase patent fees and make the Patent Office wholly self-sustaining was introduced, Mr. Thomas F. Murphy, then the Acting Commissioner of Patents, appeared and testified at a hearing of the House Subcommittee on Appropriations for the Commerce Department. From page 260 of the printed copy of that hearing, I quote what Mr. Murphy had to say:

> Mr. MURPHY. If fees are raised, we will have less applications coming in. Therefore, the small inventor, possibly, will be the one that would be squeezed out.
> Mr. HORAN. What would squeeze the small inventor out?
> Mr. MURPHY. The cost of filing applications. That is the thought of many. If we increase costs, then the man with little money will not be able to file applications, as he would if fees were low or if the service were free.

There, gentlemen, you have a terse statement of what is contemplated. Could anything be further away from the constitutional intent to secure the little fellow in his rights than that statement from an Acting Commissioner of Patents? I can't believe that this

committee of lawyers, charged with the legislative protection of our American patent system which through the incentive it affords has made ours the outstanding nation of the world, will follow any such untenable policy as Mr. Murphy in his official capacity suggested.

Let us see who have been some of these so-called little fellows. Thomas Edison, whose teacher called him a dullard, was one. The Wright brothers were little fellows, in public opinion so foolish as to believe in the ultimate success of their ridiculous undertaking that fewer than half a dozen newspapers carried the report of their first successful flight. A humble Methodist minister by the name of Goodwin gave us the photographic film. Elias Howe, with his sewing machine, was a little fellow. Many others could be named, and surely we can expect the future to add to the list. Little fellows. Such men as those would be squeezed out under the recommendation of Mr. Murphy and could be very seriously hampered if this bill should pass. The little present modification of the bill as it was considered in the 84th Congress is of minor consequence inasmuch as the measure is still grossly at variance from a fundamental constitutional principle. And keep in mind that these Patent Office fees are but a part of the many expenses these little fellows must bear. In addition to their unremitting toil to be helpful to our country with their accomplishments and the necessary expenditures of their scant funds in such research, they must pay patent attorneys to prosecute their claims before the Patent Office. And remember, too, that even after such toil and burdensome outlays they have no advance assurance whatever that their discoveries, if patented, will bring commercial success. Shouldn't we encourage them to continue their service to the Nation rather than discourage them by adding to the burdens they must bear? If we discourage them, we may reasonably expect to demote rather than promote the progress of science and the useful arts.

Now, what is our congressional and governmental attitude concerning the other Federal departments and agencies? Do we expect them to be wholly self-sustaining or even largely so? You gentlemen know very well that we do not, because you pass large annual appropriations for them without any special reciprocal return, as in the case of inventors, from the beneficiaries of those funds. We do not expect, for instance, that the Department of Agriculture should be self-sustaining, because we realize that the benefits it bestows upon our farmers and the consuming public through its various activities are sufficient to justify the Federal costs. We even subsidize newspapers and magazines through fourth-class postage rates. Oh, we could go on at great length to enumerate the public services of many branches of our Government for which it pays the costs, but, on the contrary, we overlook the fact that the inventors are contributing outstanding public service and that their discoveries have made our Nation wealthy and placed it at the forefront in every character of worthy achievement. Every one of us every day is the beneficiary of their helpful discoveries. There is no avenue of rural, urban, domestic, or commercial life that they have not blessed abundantly. But now it is proposed that we single out these benefactors and impose increased charges upon them for doing so much for our country while the Government at its own expense distributes many and varied bounties to our citizens in all walks of life.

After all, what is a patent? It is not, as some seem to think, a gift from the Government. The inventor is the one that makes the gift. A patent, on the contrary, is something the inventor has earned and is entitled to receive under the constitutional provision if his discovery meets the prescribed requirements. Then what is a patent? It is simply an acknowledgment by the Government of a gift the inventor has made for the benefit of the people of the country and for the Government itself. And how do these inventors help the Government? Can you even begin to estimate the number of thousands of jobs that the inventions of Thomas Edison alone have created? The same may be said of the Wright brothers who demonstrated the feasibility of aviation, or of Elias Howe and his sewing machine, and so forth, and so forth.

And now, furthermore, in addition to bestowing blessings upon all our people, just pause to contemplate the vast amount of revenue the Government receives from those who hold these jobs and from industry, and from commerce in general, based on the discoveries of these inventors. Contemplate, too, what our unemployment problem would be but for the work made possible by these inventors. But for the revenue they have made possible, a balanced budget would be an idle dream.

And what is now proposed in the bill before you? It is that we put a brake on the activities of those whose contributions make and keep our country great and that we dilute the encouragement of the incentive to continue their arduous labors in our behalf. That seems equivalent to saying that the Government will continue to be a beneficent godfather to our citizens in general but that it will take all the toll it possibly can from those whose contributions make possible the prosperity of our Government and our people. Let us not foolishly approach such a policy of diminishing returns.

Under all these circumstances, I'd like to have you reflect upon a very strange statement by our present Secretary of Commerce. He has described those who receive patents to bless our country with their discoveries as "special beneficiaries" of the Government. I wonder if you can think of a more shocking case of mistaken identity. I do not think that it requires any extensive knowledge of the purpose and operations of our patent system to enable one to realize that its "special beneficiaries" are the Government and the people. It was designed for and has functioned for the benefit of the public. The issuance of deserved patents by the Government is to encourage inventors to disclose their discoveries and get their useful inventions put in practice so that we can maintain our supremacy and economic prosperity. Remember that we are dealing with something which from the very beginning of our Government has been fundamental in our national policy. We must not disturb the foundation established by the fathers for our continued growth and development.

I think those who are informed with reference to the situation at the Patent Office know that the trouble there from the standpoint of its efficient operation arises from the enormous backlog of applications for patents which has accumulated. The inventors are in no way responsible for this. What, then, is the cause and what has brought it about?

This situation arose primarily in the war years and continued to exist because we lost from the Patent Office many skilled examiners

who found greater remuneration for their services available in private industry. What has been the consequence? It now takes 3 or 4 years for an application for patent finally to be passed upon, and during all that time the inventor has no protection for his discovery. It is my belief that some happy day we shall correct this situation adequately by making the Patent Office independent of any Government department. In my judgment, many important considerations prompt such action, and I am glad to note that a bill with such purpose has been introduced in the Senate.

However, under the present conditions a very helpful step is being taken to diminish this backlog trouble by reason of the fact that the Committees on Appropriations have adopted the policy of increasing appropriations for the Patent Office in order that sufficient additional examiners may be trained and used. Progress is being made, but necessarily it will require a few more years to get the problem solved through such increased annual funds. Let us not, by the enactment of this bill, add to the oppressive burdens of our inventors by putting another barrier in their way. If we will be patient and adhere to the sound principles involved in the creation and purpose of the Patent Office, we shall get the existing troubles eliminated in the proper and orderly and fundamental manner. For the good of our country and its continuing preeminence, I beseech you not to throw a monkey wrench into the established machinery of our patent system by acting favorably upon this unjustified proposal before you.

May I say one thing further. Included in this bill is a recommendation with reference to trademark fees. I would like to call to the attention of the committee that trademarks and patents stand upon an entirely different basis. Arguments that would apply to patents in many instances would not apply to trademarks. A patentable idea, of course, is not of any service to the inventor until he gets his patent. However, a trademark must be used in commerce before one can get a trademark. One depends on prior use and the other does not. Consequently, it seems to me it might be well for the trademark phase to be considered in a separate bill—and Representative Mahon, I understand, has introduced a bill with that in mind—because there are very different considerations that enter the picture from the standpoint of trademarks from those that are pertinent with reference to patents.

Thank you very much, Mr. Chairman.

(Mr. Lanham's statement is as follows:)

STATEMENT OF HON. FRITZ LANHAM, NATIONAL PATENT COUNCIL

Mr. Chairman and members of the subcommittee, my name is Fritz G. Lanham, and I represent the National Patent Council, a nonprofit organization of smaller manufacturers devoted to the preservation, the protection, and the promotion of our American patent system. And let me remind you that such small-business enterprises in many instances are absolutely dependent upon patents of independent inventors for their profitable operation. We prate much and perhaps do little to help small business and now we face a proposal to weaken it still further by impairing the incentive of independent inventors upon whose discoveries small business is so largely based. I feel, therefore, that I speak for small business and for the humble folk of our Nation who have contributed and, properly encouraged, will continue to contribute by their discoveries to the progress and prosperity of our country.

First let me say that you have been hearing from lawyers, for whom naturally I have a high regard, and from the representatives of corporations which would not be seriously hampered however high the Patent Office fees might be made.

This bill is not a matter of great consequence to them. But what about the so-called little fellows, the independent inventors, who have been responsible for so many of our basic discoveries? They are the ones to be seriously affected by this bill, the ones whose incentive will be impaired and perhaps sometimes destroyed if this proposal should be enacted. They probably do not even know that this hearing is being held. Wouldn't it be a wise policy to get their reaction to this measure so vital to them before reaching any conclusion harmful to their interests? After all, in very large measure our progress, industrially and otherwise, depends upon them. My service for 25 years as a member of the independent Committee on Patents of the House of Representatives taught me much in this regard and prompts me further to oppose what I consider an unjustified legislative proposal.

I wish to discuss in particular two of the principal objections to the enactment of this bill. The first is that it involves an unwarranted departure from the principle upon which the constitutional provision with reference to patents is predicated and, secondly, it diminishes the incentive of independent inventors to continue their labors to add to the advancement of our country along all lines of worthy endeavor.

By way of illuminating preface, I wish to call your attention to a bill to increase fees of the Patent Office which was introduced and considered by the Committee on the Judiciary in 1947. Fortunately, and, in my judgment, wisely, the committee did not report that bill. With reference to it, the Secretary of Commerce stated in his letter submitting the measure:

"The purpose of the proposed legislation is to place the Patent Office on a wholly self-sustaining basis."

In the first place, I think that statement bespeaks a lack of knowledge of the fundamental purpose of our patent system. The bill before you is a step in the same direction as the Secretary recommended, then and now.

Before differentiating the Patent Office in this respect from other governmental departments and agencies, let us consider how far afield that suggestion is from the evident constitutional intent. Our Founding Fathers were well educated men who knew the English language and understood the meaning of words. Let us look at the provision they placed in the Constitution. It is a paragraph of section 8 of article I of the Constitution:

"The Congress shall have power to promote the progress of science and the useful arts"—And how is this to be accomplished?—"by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries."

I call your attention to that word "securing." What does it mean to secure something? I quote the dictionary definition of "secure," which ought to enlighten us. Here it is: "To make secure; protect; guarantee; to get safely in possession."

I do not see how that important word could possibly be construed logically to make it mean that the Patent Office, unlike other Government departments and agencies, should be wholly self-sustaining or that restrictive limitations should be placed upon our benefactors of small means which could under any circumstances impair or deny them the security, the protection, the guaranty to get safely in possession of desired patents for their discoveries useful to our country.

Let us look further at the record in this regard. On March 12, 1947, the very day the bill recommended by the Secretary of Commerce to increase patent fees and make the Patent Office wholly self-sustaining was introduced, Mr. Thomas F. Murphy, then the Acting Commissioner of Patents, appeared and testified at a hearing of the House Subcommittee on Appropriations for the Commerce Department. From page 260 of the printed copy of that hearing, I quote what Mr. Murphy had to say:

"Mr. MURPHY. If fees are raised, we will have less applications coming in. Therefore, the small inventor, possibly, will be the one that would be squeezed out.

"Mr. HORAN. What would squeeze the small inventor out?

"Mr. MURPHY. The cost of filing applications. That is the thought of many. If we increase costs, then the man with little money will not be able to file applications, as he would if fees were low or if the service were free."

There, gentlemen, you have a terse statement of what is contemplated. Could anything be further away from the constitutional intent to secure the little fellow in his rights than that statement from an Acting Commissioner of Patents? I can't believe that this committee of lawyers, charged with the legislative protection of our American patent system, which through the incentive it affords has made ours the otustanding nation of the world, will follow any such untenable policy as Mr. Murphy in his official capacity suggested.

Let us see who have been some of these so-called little fellows. Thomas Edison, whose teacher called him a dullard, was one. The Wright brothers were little fellows, in public opinion so foolish as to believe in the ultimate success of their ridiculous undertaking that fewer than half a dozen newspapers carried the report of their first successful flight. A humble Methodist minister by the name of Goodwin gave us the photographic film. Elias Howe, with his sewing machine, was a little fellow. Many others could be named, and surely we can expect the future to add to the list. Little fellows: Such men as those would be squeezed out under the recommendation of Mr. Murphy and could be very seriously hampered if this bill should pass. The little present modification of the bill as it was considered in the 84th Congress is of minor consequence inasmuch as the measure is still grossly at variance from a fundamental constitutional principle. And keep in mind that these Patent Office fees are but a part of the many expenses these little fellows must bear. In addition to their unremitting toil to be helpful to our country with their accomplishments and the necessary expenditures of their scant funds in such research, they must pay patent attorneys to prosecute their claims before the Patent Office. And remember, too, that even after such toil and burdensome outlays they have no advance assurance whatever that their discoveries, if patented, will bring commercial success. Shouldn't we encourage them to continue their service to the Nation rather than discourage them by adding to the burdens they must bear? If we discourage them, we may reasonably expect to demote rather than promote the progress of science and the useful arts.

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After all, what is a patent? It is not, as some seem to think, a gift from the Government. The inventor is the one that makes the gift. A patent, on the contrary, is something the inventor has earned and is entitled to receive under the constitutional provision if his discovery meets the prescribed requirements. Then what is a patent? It is simply an acknowledgment by the Government of a gift the inventor has made for the benefit of the people of the country and for the Government itself. And how do these inventors help the Government? Can you even begin to estimate the number of the thousands of jobs that the inventions of Thomas Edison alone have created? The same may be said of the Wright brothers, who demonstrated the feasibility of aviation, or of Elias Howe and his sewing machine, and so forth, and so forth.

And now, furthermore, in addition to bestowing blessings upon all our people, just pause to contemplate the vast amount of revenue the Government receives from those who hold these jobs and from industry, and from commerce in general, based on the discoveries of these inventors. Contemplate, too, what our unemployment problem would be but for the work made possible by these inventors. But for the revenue they have made possible, a balanced budget would be an idle dream.

And what is now proposed in the bill before you? It is that we put a brake on the activities of those whose contributions make and keep our country great and that we dilute the encouragement of the incentive to continue their arduous labors in our behalf. That seems equivalent to saying that the Government will continue to be a beneficent godfather to our citizens in general, but that it will take all the toll it possibly can from those whose contributions make possible the prosperity of our Government and our people. Let us not foolishly approach such a policy of diminishing returns.

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I think those who are informed with reference to the situation at the Patent Office know that the trouble there from the standpoint of its efficient operation arises from the enormous backlog of applications for patents which has accumulated. The inventors are in no way responsible for this. What, then, is the cause and what has brought it about?

This situation arose primarily in the war years and continued to exist because we lost from the Patent Office many skilled examiners who found greater remuneration for their services available in private industry. What has been the consequence? It now takes 3 or 4 years for an application for patent finally to be passed upon, and during all that time the inventor has no protection for his discovery. It is my belief that some happy day we shall correct this situation adequately by making the Patent Office independent of any Government department. In my judgment, many important considerations prompt such action, and I am glad to note that a bill with such purpose has been introduced in the Senate.

However, under the present conditions a very helpful step is being taken to diminish this backlog trouble by reason of the fact that the Committees on Appropriations have adopted the policy of increasing appropriations for the Patent Office in order that sufficient additional examiners may be trained and used. Progress is being made, but necessarily it will require a few more years to get the problem solved through such increased annual funds. Let us not by the enactment of this bill add to the oppressive burdens of our inventors by putting another barrier in their way. If we will be patient and adhere to the sound principles involved in the creation and purpose of the Patent Office, we shall get the existing troubles eliminated in the proper and orderly and fundamental manner. For the good of our country and its continuing preeminence, I beseech you not to throw a monkey wrench into the established machinery of our patent system by acting favorably upon this unjustified proposal before you.

Mr. WILLIS. Thank you very much, Fritz.

I understand there might be some in the audience who would want to make a brief statement or file a statement.

Mr. BAILEY. Mr. Chairman, might I make a brief statement?

Mr. WILLIS. Yes.

## TESTIMONY OF JENNINGS BAILEY, Jr., CHAIRMAN, COMMITTEE ON LEGISLATION, PATENT SECTION, AMERICAN BAR ASSOCIATION

Mr. BAILEY. Mr. Chairman, my name is Jennings Bailey, Jr. I am a lawyer specializing in patent and related matters and practicing in Washington, D. C. I am appearing as chairman of the committee on legislation of the patent section of the American Bar Association, with the approval of the governing bodies of the association.

In May of 1955, the board of governors of the association, upon the recommendation of our section, adopted a resolution which I would like to read to the committee:

1. *Resolved*, That the American Bar Association approves in principle a reasonable increase in the fees charged by the United States Patent Office; and

*Further resolved*, That the American Bar Association disapproves as excessive and unreasonable the schedule of Patent Office fees proposed in H. R. 4983.

2. The section of patent, trademark, and copyright law is authorized to state the position of the association in respect to Patent Office fees, as above adopted, to Members and committees of Congress and to Government officials concerned with such fees.

Mr. Chairman, H. R. 4983, the bill referred to in the above resolution, was substantially identical with the present H. R. 7151, with the exception that in items 1 and 2 the extra claim fee was $5 per claim instead of $2; and that in trademarks there was a $25 filing fee and a $10 issue fee, whereas H. R. 7151 provides for a filing fee of $35 with no issue fee.

Our section in the house of delegates has never passed on the reasonableness of the fees provided in the present bill, and I cannot speak on that, since, as a representative of the American Bar Association, I can only present the position of the association as adopted by either its board of governors or the house of delegates. However, I might state that I think one of the principal objections in our section to the previous bill lay in the $5 fee for the additional claims, and also in the restriction of that to 5 claims.

Mr. WILLIS. You have no independent suggestion to make as to what the fees should be?

Mr. BAILEY. Mr. Chairman, speaking as an individual—and I can only speak in that way—and judging by my committee's general feeling on the bill, I think that we would feel that this bill is quite reasonable except for possibly allowing 10 claims instead of 5 before the extra fees apply. The Patent Office presently allows an applicant to file a generic claim and to make reference to 5 species, if he has 5 modifications as is common in chemical cases. In that case he would have to pay $2 even on the 5 species that the Patent Office allows him to claim.

But aside from that I certainly think that my committee as a whole feels that the bill is quite reasonable. We recognize there have been great increases in the cost of living and that the Patent Office fees, as a general rule, are a relatively small part of the cost of the entire application.

Mr. WILLIS. Thank you very much.

Is there anyone else in the audience who desires to make a statement or file a statement?

## TESTIMONY OF BOYNTON P. LIVINGSTON, ON BEHALF OF THE UNITED STATES TRADEMARK ASSOCIATION

Mr. LIVINGSTON. Mr. Chairman, my name is Boynton P. Livingston. I appear on behalf of the United States Trademark Association. I have a brief statement to submit to the committee on behalf of the association with reference to trademark fees.

Mr. Chairman, if you would prefer I will read the statement or submit it to the committee and make some brief overall remarks.

Mr. WILLIS. I think you might follow the latter course. In other words, you can talk from the statement.

Mr. LIVINGSTON. The trademark committee of the United States Trademark Association has not had an adequate opportunity to consider the two bills which are before the House; that is, H. R. 7997 and H. R. 7151. They have, Mr. Chairman, in a letter to you of June 14, 1957, endorsed H. R. 7997.

They wish to go on record at this juncture that the endorsement was only in principle, and they did not wish to be put in the position of having specifically approved each of the provisions of that bill, because there are differences between H. R. 7997 and H. R. 7151. The association desires, however, an opportunity to present a supplemental statement as soon as they have been able to evaluate the specific provisions and reach some decision upon them. It is therefore requested that they be given an opportunity to present such a statement.

Mr. WILLIS. How soon can you do it?

Mr. LIVINGSTON. I am sure the association will handle the matter with dispatch.

Mr. WILLIS. Do the best you can.

Mr. LIVINGSTON. Perhaps a week or 10 days would be sufficient.

Mr. WILLIS. Very well.

Mr. LIVINGSTON. Thank you.

(The following statement was submitted for the record:)

STATEMENT OF BOYNTON P. LIVINGSTON ON BEHALF OF THE UNITED STATES TRADEMARK ASSOCIATION

Mr. Chairman, my name is Boynton P. Livingston. The United States Trademark Association has designated me, an associate member of that association, to appear before this subcommittee and inform you of the position of the United States Trademark Association with respect to H. R. 7997, and that portion of H. R. 7151, which amends section 31 of the Trademark Act approved July 5, 1946, covering trademark fees.

The United States Trademark Association was formed 80 years ago, and is composed of businessmen and organizations, who are trademark owners, as active members, and lawyers, advertising agencies, and others who are interested in trademarks, as associate members.

The association believes it is desirable to increase trademark fees in the Patent Office in order that the trademark operations of that Office may be financially self-supporting.

Mr. Chairman, I believe you have received a letter dated June 14, 1957, from the president of our association, Mr. Edgar S. Bayol, in which the association endorsed H. R. 7997. The association at this juncture wishes to go on record to the effect that, while they have endorsed H. R. 7997, they have endorsed it only in principle; namely, that it purports to increase the trademark fees in an effort to have the trademark operations in the Patent Office self-sustaining.

The association desires to inform this subcommittee that it has not had sufficient opportunity to fully consider and evaluate each of the specific provisions in H. R. 7997. Accordingly, the previous endorsement of H. R. 7997 should not be considered a specific approval of each of the fees recommended.

The association has previously approved certain of the fees included in this bill, and has also in prior actions approved certain other trademark fees specified in H. R. 7151. Until such time as the association has the opportunity of considering and reaching a decision as to the particular provisions of each bill, H. R. 7997 and H. R. 7151, its position is simply that it endorses and approves such bills in principle.

Prompt consideration will be given to the specific provisions of each bill by the association. It is, therefore, requested that permission be granted the association to file a supplemental statement with this subcommittee regarding them.

Mr. Chairman, I want to thank you for the opportunity of presenting to you the views of the United States Trademark Association.

Mr. WILLIS. Would anyone else like to be heard or file a statement?

This will conclude the hearings, but we will hold the record open for a reasonable time for the filing of statements.

The hearing is adjourned.

(Thereupon, at 12:10 p. m. on Thursday, June 20, 1957, the hearing was adjourned.)

(The following material was submitted later for the record:)

THE SECRETARY OF COMMERCE,
*Washington, D. C., April 10, 1957.*

Hon. SAM RAYBURN,
*The Speaker, the House of Representatives,*
*Washington, D. C.*

DEAR MR. SPEAKER: There are enclosed four copies of draft legislation for the general purpose of increasing fees collected by the United States Patent Office of the Department of Commerce in the consideration and issuance of patents and registration of trademarks and the performance of related activities. There are also enclosed copies of a section-by-section analysis and explanation of the legislation. The fees which would be modified by the proposal are presently established by statute and, therefore, congressional action is necessary to effect changes.

The last major change in patent fees was in 1932 when the application and issuance fees were raised to $30 each. Immediately after the 1932 revision of fees the Patent Office was collecting in fees a sum exceeding 90 percent of the cost of operating the Patent Office. Although since that time the costs of operation of the Patent Office have risen sharply, no major adjustment in fees has been made to effect the same recovery of costs. In the 3 years 1954–56, the Patent Office recovered in fees 48 percent of its cost of operation. For the current fiscal year (1957), it is estimated the receipts, though higher than in prior years, will bring in only 40 percent of costs. If the proposed fee schedule had been in effect during fiscal 1957, recovery would be approximately 60 percent of costs. However, because of increased expenditures estimated for the Patent Office, this percentage would be less in 1958. During the next few years it is estimated that the fees under the proposed bill would cover only about 55 percent of expenditures.

The Department urges early congressional action to enable the Government to effect greater recovery of costs from special beneficiaries of this Government program. Such action would be in furtherance of the administration's policy of charging special beneficiaries of Government programs for the costs of operation attributable to special beneficiaries.

The Bureau of the Budget has advised that there would be no objection to the submission of this draft bill to the Congress, and that enactment of legislation to increase patent fees would be in accord with the program of the President.

Sincerely yours,

SINCLAIR WEEKS,
*Secretary of Commerce.*

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THE UNITED STATES TRADEMARK ASSOCIATION,
*New York, N. Y., June 28, 1957.*

Hon. EDWIN E. WILLIS,
*House Office Building, Washington, D. C.*

DEAR CONGRESSMAN WILLIS: At the hearings held on June 20 by your subcommittee with respect to proposed fee increases on trademarks, our delegate, Mr. Boynton P. Livingston, was given additional time to file a statement on H. R. 7151 and H. R. 7997. We greatly appreciate the subcommittee's courtesy in this regard.

As we stated in our letter to you of June 14, 1957, the United States Trademark Association has been of the opinon that it is necessary and desirable to increase fees in the Patent Office in order that the trademark operations might be financially self-supporting. At that time we expressed the belief that H. R. 7997 appeared likely to accomplish that result. However, time did not permit us then to make a thorough study of the pending bills as compared to the present fees with a view to possible returns to the Office.

We have now had an opportunity to do this, and on reconsideration we now feel that on balance H. R. 7151, the Celler bill, is the preferable bill. Our review of the pending bills leads us to the opinion that some of the proposed fees contained in H. R. 7997 might prove burdensome to trademark owners and to the Patent Office in the administration of trademark operations.

We should, therefore, at this time like to record our endorsement of H. R. 7151 insofar as it relates to increased fees with respect to trademarks, as it appears more likely to accomplish the goal of making trademark operations self-supporting. Inasmuch as this association is not concerned with patents, we have no statement to file with respect to the proposed increased patent fees included in H. R. 7151.

We are hopeful your subcommittee will approve H. R. 7151 and that it will recommend its enactment into law at an early date.

Respectfully yours,

EDGAR S. BAYOL, *President.*

SMALL BUSINESS ADMINISTRATION,
*Washington, D. C., June 11, 1957.*

Hon. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,*
*House of Representatives, Washington, D. C.*

DEAR CONGRESSMAN CELLER: Further reference is made to your letters of May 16 and May 27, 1957, requesting the views of this agency with respect to H. R. 7151, a bill to fix the fees payable to the Patent Office, and for other purposes. By letter of June 10, 1955, you were advised that the Small Business Administration favored the enactment of a similar bill (H. R. 4983) introduced in the 84th Congress to increase charges made by the Patent Office for servicing patents and trademarks. Since H. R. 7151 contains no objectionable variation from H. R. 4983, we favor its enactment.

The Bureau of the Budget informs us that the enactment of legislation to increase patent and trademark fees would be in accord with the program of the President.

Sincerely yours,

WENDELL B. BARNES, *Administrator.*

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STATEMENT OF THE NATIONAL ASSOCIATION OF MANUFACTURERS

Mr. Chairman and members of the committee, the National Association of Manufacturers is a voluntary organization of approximately 22,000 manufacturers, 83 percent of whose members have less than 500 employees each. It represents a cross section of American industry, including manufacturing companies of all sizes.

The association's position on the subject of Patent Office fees is as follows:

"The association favors a moderate increase in Patent Office fees not inconsistent with the principle that the general public should bear a fair proportion of the cost of operation of the Patent Office. There should be no imposition of any levy on patents subsequent to the date of the grant."

It is recognized, of course, by everyone that the value of the dollar has decreased since the present fees were set. There is come disagreement among those interested (both within and without the association membership) as to the total of the increase that should be made, and also as to the wisest distribution of any given total among the several different fees charged.

The purpose of making this statement is not to advocate any particular total of added fees or any particular distribution among the items, but rather to suggest to the committee some general principles upon which a wise decision on these questions can be reached so far as fees for patents are concerned.

The basic fact from which we must start is that our entire patent system, including the Patent Office, was set up wholly for the benefit of the general public, in a sense not true of many Government operations.

It all springs from article I, section 8, of the Constitution, authorizing the granting to inventors of the exclusive right to their respective inventions, for limited times. The purpose is there explicitly stated as being "to promote the progress of the useful arts."

The "useful arts" was the name applied to the things we use in our daily lives and our ways of doing things. These things make up what we call today our "standard of living." Quite obviously the plan was to improve the standard of living of the whole people by giving a limited grant as pay to those who were able to make improvements in our standard of living. It is certain that the gentlemen who wrote this into the Constitution were not proposing class legislation for the benefit of particular groups of citizens.

The patent system is a plan for getting things (inventions) from individuals and giving them to the public (as the patents expire). It is a plan for hitching the horsepower of private interest to the cart of public benefit.

Over a hundred years ago, in the case of *Grant* v. *Raymond,* Chief Justice Marshall stated the whole philosophy of patents quite simply. He said of the patent:

"It is the reward stipulated for the *advantages derived by the public* from the exertions of the individual, and is intended as a stimulus to those exertions." [Emphasis supplied.]

And only a few years ago, Dr. Karl T. Compton said:

"The patent system itself is fundamentally one of the greatest social inventions which has been made *for the benefit of the human race.*" [Emphasis supplied.]

The inventor or his backer does, sometimes, make money from the patent, and if they never did, the reward proposed by the Constitution would have no value and its plan to benefit the public would fail entirely, but the inventor's benefit is altogether subordinate in this plan. It corresponds to the benefit which others serving the public derive from their paychecks. Patents are to reward inventors for having created and disclosed to the public something new and useful to it.

Since the Patent Office is set up for the purpose of benefiting the public, it is obviously a mistake to fix the fees in that Office with the idea of making the inventors bear its entire cost. They already have to bear all the cost of creating the improvements and have to take all the risk of getting them onto the market.

In deciding, then, what fee increases shall be made by this bill, we urge the committee not to fix the fees with the idea that this is a plan—or a part of a plan—to make the Patent Office self-supporting. Inventors are not special beneficiaries to whom the Patent Office cost of operation is attributable.

On the other hand, both reason and precedent justify charging inventors some fees.

To begin with, if we charged no fees, the Patent Office would quite certainly be literally swamped under a deluge of requests for patents on trivial and ridiculous suggestions.

Again, in connection with many applications for patent, the Office is of more or less help to the inventor in reaching the required exact statement of the novelty which his invention presents.

Also, there are certain special services which the Office does perform entirely for the benefit of the particular individuals concerned, such as the recording of assignments, furnishing copies of Office records, issuing certificates of correction for applicants' mistakes, etc. Fees for such services should properly cover the entire cost of the particular service involved.

Through no fault of inventors, the examination of applications for patents is becoming more and more difficult, ime consuming, and costly than it was, say. 50 years ago. The field to be searched to determine novelty is about 3 times as large as it was 50 years ago, and the advances in organic chemistry, electronics, atomic energy, etc., have resulted in inventions of a much more complex character than in former years. It should be recognized, therefore, that the mere fact that fees charged in years gone by did at the time nearly, or fully, cover the Patent Office costs of those days, does not mean that this is practicable today. The minute we load the inventor with more expense than he is willing to risk, we choke down the stream of improvements necessary for a rising standard of living.

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STATEMENT OF GEORGE D. RILEY, AFL–CIO LEGISLATIVE REPRESENTATIVE

The inventiveness and ingenuity of the American people is unbounded and will continue to be, except that any hardships on inventors, especially individuals, can only serve to constrict their initiative due to financial distress.

Already it is true that there are those would-be patentees who are making time payments to someone, probably their attorneys or finance companies who may have advanced needed moneys. On the other hand, the increase in fees can hardly be said to work any hardship or disadvantage on large companies who can charge the increases to the cost of doing business, so that the burden rests squarely upon the small inventor. It is hardly necessary, I am sure, to call your committee's attention to the percentage of increases in H. R. 7151, but some of the more important ones do bear remarking upon. They range from 50 to 75 to 100 percent

If it is desired to refer to the idea of pegging present Patent Office fees and calling this subsidy, it would be difficult to mention any field more worth while for subsidy payments. Certainly, the vast sums spent in subsidies include many areas which will never produce a fraction of the return to the United States Government and all its people as will patents which can well remain ungranted. when and if your committee sees fit to report H. R. 7151.

I am sure that it is widely realized that members of organized labor have produced a great percentage of the patents which today are making the lives of Americans more livable and more worth while.

Increasing revenues constitute an overall approach to whatever problem wherever to be found in Government. We see the same thing proposed in the Post Office Department and in practically every arm of Government where direct service to the public for a price is rendered. Whatever is wrong in the Patent Office is—

1. Not the fault of the patentees, so far as we can see;
2. Will not be solved only by adding fees upon fees.

I recall the words of the House Committee on Appropriations in its report for the fiscal year 1955, which said in part:

"* * * The Patent Office was established as a constitutional agency designed to protect the individual and serve the public. At no time was it contemplated that it should become self-sustaining."

The Congress has recognized the Government's responsibility in recent years by adding, at least in 1 year, a substantial increase of $2,500,000 to $14 million which was half a million dollars in excess of the $2 million requested for the Patent Office by the Bureau of the Budget.

As I remember, this is probably one of those items which the Hoover Commission has been thumping for, just as it has been trying to get a program across in whole or piece by piece, but which the Congress has not been buying much of lately.

Hearings were held a year ago by the Senate Committee on the Judiciary on S. 2157 and H. R. 2383 dealing with awards to inventors.

I think it appropriate to comment that there probably will be fewer awards as a result of enactment of H. R. 7151 through the possible discouragement of activity on the part of would-be inventors.

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## Statement of Chauncey P. Carter

My name is Chauncey P. Carter; I am a practicing lawyer in the District of Columbia. I have been specializing in the registration of trademarks here and abroad since 1912.

Because the Patent Office does not account the trademark operation separately from the patent operation, it is difficult—and to some extent impossible—to exactly determine patent or trademark revenues or expenses for any fiscal year.

In connection with the recent hearings before the subcommittee of the House Appropriations Committee in connection with fiscal 1958, the Commissioner of Patents stated that trademark costs are approximately 5 percent of total Patent Office costs, but in connection with the hearings on the predecessor Celler and Mahon bills in 1955, the Commissioner's statement showed a total Patent Office average expense for the fiscal years 1952 to 1954, inclusive, of $12, 094,357 of which he reported that $959,529 was attributable to "all trademark activities, including the appropriate proportion of general activities of the Patent Office" so that the committee report on H. R. 7416 of the 84th Congress found (p. 6) that "The trademark work of the Patent Office accounts for about 8 percent of the expenses of the Patent Office."

Since the Commissioner has within the past few months advised another committee that trademark activities account for only 5 percent of the total expenses of the Patent Office, it can only be concluded that increases in the Patent Office appropriation since fiscal 1954 have been largely expended for the patent operation and that the trademark operation still costs less than a million dollars per annum "including the appropriate proportion of general activities," however that may be determined.

I have been unable to obtain any official computation for cost of the trademark operation later than that which I obtained from Mr. Federico at the 1955 hearing, as follows:

*Cost of operation, annual average 1952–54, $959,529*

| | Amount | Percent of total |
|---|---|---|
| BY MAJOR OBJECT | | |
| Salaries of examiner personnel (64 employees) | $426, 521 | 45 |
| Salaries (clerical and administrative) | 365, 825 | 38 |
| Printing and reproduction | 144, 587 | 15 |
| All other | 22, 596 | 2 |
| BY SELECTED GROUPING | | |
| Examination of applications | 742, 120 | 77 |
| Issuance of certificates | 179, 039 | 19 |
| Assignments and records | 38, 370 | 4 |

Presumably, more up-to-date figures have been or will be presented by the Commissioner at the present hearing, but his statement that trademark costs are now only 5 percent of the total appropriation indicates that there has been no marked increase in the $959,529 figure submitted in 1955, since the current Patent Office appropriation is less than $20 million.

While it is admitted by the Commissioner that the processing of applications for original trademark registration (which includes the issuance of certificates for those that are allowed) constitutes the principal activity and is the major revenue-producing item in the trademark operation, no official figures on the cost of this operation have ever been made public if they have ever been ascertained. The above breakdown "by selected groupings" gives the impression that this activity accounts for 96 percent of the total cost of the trademark operation, but the fact is that the item of $742,120 for "examination of applications" includes not only the processing of applications for original registration but also the processing of applications for renewal; affidavits under sections 8, 12c, and 15; new certificates of registration; certificates of correction; certificates of disclaimer; certificates of amendment, oppositions, cancellations, interferences (and appeals). From official figures or estimates published or obtainable by the undersigned prior to this hearing, the following table of current revenue from trademark activities has been prepared:

*Estimated trademark revenues, calendar 1957*

| | |
|---|---|
| Applications for registration (22,000 in calendar 1956), at $25 | $550, 000 |
| Applications for renewal (1946–54 average was 4,237), at $26 | 110, 162 |
| Oppositions (1,182 filed fiscal 1955), at $25 | 29, 550 |
| Printed copies (1952–54 average was) | 24, 405 |
| Recording assignment (Patent Office assignment officer estimates 3,000 instruments averaging 5 marks each), at $5 each | 15, 000 |
| Claims under sec. 12 (c) (1953–55 average), at $11 each | 15, 000 |
| Secs. 8 and 15 affidavits (official estimates, 12,500), at $1 | 12, 500 |
| Certifying copies, trademark records (see item 19 on p. 35 in 1955 hearings) | [1] 10, 000 |
| Copies trademark grants (1952–54 average) | 8, 055 |
| Appeals (247 in fiscal 1955), at $25 | 6, 175 |
| Cancellations (235 in fiscal 1955), at $26 | 6, 110 |
| New certificates, disclaimers, amendments, and corrections (1952–54 average was 237), at $11 | 2, 607 |
| Abstracts of title | [1] 2, 500 |
| Miscellaneous | [1] 1, 000 |
| Total | 793, 064 |

[1] My estimate.

Assuming that the cost of the trademark operation is not now in excess of $1 million, and that it is desired to increase revenues to meet such cost, the Congress must provide for increased or new fees that will produce an additional $200,000 annually. An analysis of the Celler and Mahon bills as applied to the operation pictured in the foregoing table shows the following additional revenues annually for the next 5 years:

| | H. R. 7151 | H. R. 7997 |
|---|---|---|
| Applications for registration | $220, 000 | $110, 000 |
| Affidavits under sec. 8 (12,500 at $10) | ([1]) | 125, 000 |
| Recording assignments | 27, 000 | 75, 000 |
| Renewals (late filings) | | 5, 535 |
| Interferences | 2, 500 | 3, 500 |
| New certificates, certificates of correction, amendments, and disclaimers | 1, 000 | 2, 750 |
| Cancellations | | 2, 350 |
| Appeals | | 1, 500 |
| Total | 250, 500 | 325, 635 |

[1] Under the Celler bill, there will be no revenue from these affidavits for at least 5 years.

It will be noted (*a*) that the Mahon bill will produce at least $75,000 more per annum for the next 5 years, and (*b*) that the Celler bill imposes almost all of its

proposed increase on applicants for original registration who are asked to pay 40 percent more than the fee fixed commencing as late as fiscal 1948, which was an increase of 66⅔ percent over the fee fixed in 1930.

Since it is believed unfair and inequitable to impose a 40-percent increase on applicants for original registration so soon after a 66⅔-percent increase (there is nothing comparable in the patent-fee proposals), the Mahon bill raises the fee for filing original applications only $5 or 20 percent, but applies reasonable increases to other operations which are not now paying their way.

As introduced, the Mahon bill will produce an additional annual revenue of over $325,000, or a total trademark revenue of almost a million and a quarter dollars commencing January 1 next as against an estimated cost of about a million dollars. If this is deemed to be too great an increase, the fee for recording affidavits under section 8 could be reduced to $5 (a reduction of $62,500) and the fee for recording assignments could be reduced to $5 for the first and $2 for each additional mark (a reduction of $51,000). It could also be provided that the present $1 fee for title search in connection with applications for renewal, claims under section 12 (c), section 8 affidavits, and cancellations be eliminated (a reduction of $18,354).

I recommend that the subcommittee report one bill to revise the patent-fee schedule and another bill to revise the trademark-fee schedule for the following reasons: (*a*) There is nothing in common between grants of patent rights and registration of common-law trademark claims; (*b*) patent fees are fixed by the Patent Code whereas trademark fees are fixed by the Trademark Act (two separate enactments); and (*c*) no one has yet been heard to object to a revision of the trademark-fee schedule sufficient to meet the cost of the trademark operation, whereas many hold to the view that patent fees should not have to bear the whole cost of the patent operation.

## STATEMENT OF JONES, DARBO & ROBERTSON, ATTORNEYS AT LAW, CHICAGO, RE THE MERITS OF THE PATENT OFFICE FEE QUESTION

### A. PRIVATE BENEFICIARIES SHOULD PAY COST OF SERVICE ON THEIR BEHALF, BUT ISSUING PATENT IS NOT SUCH SERVICE

In 1953 one association subscribed to certain general principles, attributed to the Director of the Budget, relating to the charging of fees for governmental service to individuals. There would probably still be unanimous endorsement of the underlying principles, although consideration of the wording then used or any now proposed might show much to disagree with.[1] Approximately stated, this principle is that the cost of a Government service should ordinarily be paid for by a special beneficiary of the service to the extent that the benefit of the service flows directly to him. We do not believe, however, that the work of the Patent Office should be deemed primarily a service to the applicant. We believe that the friends of the patent system should never let the Budget Bureau, Congress, or the public forget the great differences between the function of the Patent Office and the function of the more typically "service" agencies with respect to which any such statement of principles is more clearly applicable.

### B. PATENT OFFICE YIELDS DIRECT PUBLIC BENEFITS

It may be true that every governmental agency has an aspect of public benefit, or it ought not to exist. But there are different kinds of public benefits.

For example, compare the Patent Office with the Post Office. The Post Office is of great public benefit, but substantially all of its benefits flow through the individuals served. If a business house pays the entire cost of such service to it, it passes this cost along to the customers; and to a large extent all of the beneficiaries of the service contribute toward paying for it.

If the entire benefit from the patent system were in connection with the distribution by the patentee of his patented invention, charging him the entire cost of the work done in connection with his patent would similarly result in the cost being shared by all who benefit. But we know that the Patent Office produces great benefits which do not flow through the patentee to his customers. Most clearly, the public dissemination of knowledge is a "direct public benefit." Of course, the beneficiaries may be private individuals, but they are "public" as distinguished from the patentee who pays the fee. It is not fair for the inventor

[1] In fact, a major exception concerning fees which would impair the public interest was added to the statement comprising our "source" but never got into our statement.

(and his customers if he is lucky enough to get them) to have to pay for these benefits.

### C. THE VALUABLE PUBLIC DISSEMINATION IS "PAYMENT IN KIND" BY INVENTOR

In considering the important benefit of public dissemination of information, we should realize that the information is not created by the work of the Patent Office, but by the inventor. He not only creates the invention but he pays for the manuscript describing it.

Probably everyone would admit that the value of this dissemination would be many times the Patent Office costs, if none of the information became available otherwise. It is difficult to decide how much this should be discounted because most of the more important information is available elsewhere (partly due to the protection and enforced disclosure). The fact that the Government pays for the preparation of and typesetting of other technical manuscripts even when the information is available (and often old) suggests a minimum value of patent manuscripts far above Patent Office costs. The Government also pays for preparing the manuscripts (applications) of Government-owned patents.

Where else in the Government does a direct private beneficiary not only pay a substantial fee but also make an expensive "payment in kind"?

### D. THE PRIVATE BENEFIT IS MAINLY THE INVENTOR'S OWN CREATION

There is no doubt that patents granted by the Government are sometimes extremely valuable, but the value of the patent is almost entirely created by the inventor himself. In a sense, this is proved by the fact that many patents prove worthless because the invention patented is worthless. It follows that all that a patent does is to give the patentee protection under which he has a chance to reap the value which he himself created. This protection could be given (without examination or printing) at no cost.

Sometimes it is said that the presumption of validity is an added benefit for which the patentee should pay the cost. The presumption is a byproduct of our system of patent claims and examination thereof. The more direct beneficiary of the claim system, on which the examiner spends most of his time, is the competing manufacturer who benefits by having this aid in determining what he can manufacture outside of the patent without paying a royalty to the patentee. If we were to treat the claim system as something which in fairness may be charged to the patentee, we should give the patentee the option of choosing to forgo it and take his patent with neither the presumption of validity nor the risks of technical invalidity inherent in the claim system. That we would not be willing to thus change our laws shows that the claim system has important benefits other than those flowing to or through the patentee.

In fairness, the claim system and all of its costs could well be charged off as a necessary part of developing these public benefits for which the patent system exists, with a recognition that these costs are far more than paid for by the "payment in kind" made to the public by public dissemination of the patent disclosures.

Even if the "payment in kind" is ignored, the patent transaction could easily be treated as one mutually desired, in which each party should pay his own costs.

### E. WHY PATENT OFFICE FEES?

In reply to such arguments indicating that the value of that which the inventor furnishes for public dissemination is greater than that which he derives from Patent Office operation, the question is likely to be asked: "Then why have Patent Office fees?"

*1. To induce selection and care—fee high enough*

From the standpoint of the patent system there are two reasons for fees. One is to induce the exercise of some care and selection in the filing of patent applications. The other is to get for the Patent Office things which could not otherwise be obtained. A reason which is sometimes advanced, "public relations" is discussed separately below. From the standpoint of the first function, inducing care and selectivity, the present fee is probably high enough. Approximately 50 percent of the patent applications filed mature as patents.[2] Even if all of the rest were carelessly filed, this would not be a clearly excessive proportion. We all know, however, that a large share of applications dropped were filed with the

[2] November 1954, JPOS, p. 791 (figured from statistics for the 10-year average, but assuming some of the 9,000 yearly increase in backlog would become patents).

usual degree of care and selection. Probably another large share is made up of applications filed with the honest judgment of an attorney that the particular circumstances did not warrant a search, and we think there are times when such a judgment can be sound. It would seem to follow that a relatively small percentage of the patent applications filed is of a type better screened out by a larger fee. Unfortunately, it is impossible for fees to discourage with the right selectivity. Inventions which are trivial in nature but have good financial prospects, are not discouraged; while applications on inventions which are of relatively important nature but of poor financial potential are discouraged.

*2. To gain something for the Patent Office, fee raise later more effective*

At the present time, Congress and the administration seem to have been so well educated as to the need of adequate funds for the Patent Office that there is nothing to be gained now by an increase in fees.

Fee increases have been useful in the past in gaining advantages for the Patent Office. Our committee has a statement by a former Commissioner of Patents indicating that after he tried for years to get the examiners' salaries increased and to get more examiners he finally succeeded by a deal made between administration officials and the chairman of the proper congressional committee that the latter would increase the fees $5 if the examiners were upgraded and 100 new examiners provided. We recognize that the time may come in the future when the bar is too lazy or ineffective to obtain for the Patent Office what it thinks the Patent Office should have without some such deal. It seems obvious, however, that for that purpose a deal when the problem arises will be more effective than an increase tolerated now when nothing is now gained. Indeed, it might be possible in the future to make 2 or 3 deals for the total amount of the increase which could easily be surrendered now if we choose to surrender without gain.[3]

### F. PATENT SYSTEM'S PUBLIC RELATIONS IMPROVED BY ESPOUSING ABOVE FACTORS

There are those who think that our patent system's public relations would be better if the Patent Office does not cost the taxpayer any money. It can equally be argued that the higher the fees, the more there will be a possibly subconscious public reaction that the applicant is buying a private gain. Certainly the education of Congress and the public along the lines of parts A to C of this report constitutes good public relations.

Even to the extent that there is any validity to the argument that public relations would be better if the Patent Office was supported entirely by fees, that degree of support seems to be entirely out of the question at present (unless the maintenance fee proposal be revived) and short of that goal it would seem that the gain in public relations, even from a one-sided view, would be negligible.

Keeping fees down is also good public relations for the patent system from another standpoint. The higher the costs, the more tendency there is for the patent system to be thought of as benefiting mainly big corporations. Statistics showing to the contrary cannot entirely overcome impressions. Surely garret inventors and small business would feel a fee increase most.

### G. POLICY OF "TAXING WHERE YOU CAN" IS NOT SOUND POLICY HERE

Aside from benefiting the patent system, one reason stated for a patent-fee increase by some of the more frank advocates thereof is that with its present spending rate, the Government has got to raise more money. An increase in patent fees is one place where it is practical for the Government to raise more money, therefore the fees should be increased. This policy of "soak the hope-to-be-rich" is one which the bar cannot aid without again being in a position of being mighty generous with their client's money. Indeed, even lawyers who believe in such a policy could well subscribe to making clear to Congress that only such a policy would justify a fee increase (for reasons above discussed) lest Congress otherwise go too far in applying this "tax where you can" policy.

A precedent against taxing the inventor just because you can is found in the decision by Congress to give the inventor a special tax benefit[4] at the profit end of their inventive enterprises. Surely in the earlier heavy expense end of these inventive enterprises the inventors are even more in need of being free from unfair taxes in the form of fees higher than required by the sound considerations heretofore discussed.

[3] Establishing now the principles here asserted will help in the future by giving us reasons of principle for yielding less for every gain, when and if deals become necessary.

[4] Sec. 1235 of the 1954 Internal Revenue Code.

### H. LOW FEES IS CHEAPEST ENCOURAGEMENT OF VITAL PROGRESS

The importance of encouraging inventive progress cannot be doubted in these times. Now national survival augments the usual objectives of maintaining our economy and improving our way of life. The incentives of our patent system are the means by which this encouragement is accomplished. This encouragement is bound to be reduced by any added cost to those we seek to encourage, and might be reduced even more by the unappreciative attitude reflected by a demand that the inventor pay more. The effect of the reduction of encouragement might never be detectable, but is risking any such effect sound public policy?

How could progress be encouraged more cheaply than by saying to American [5] inventors: "You are doing a fine job. Keep it up. We are glad to pay the increased Patent Office costs with a fraction of a thousandth part of the income taxes from industries you and your predecessors have made possible."

[5] This is not pure flag waving. In spite of the importance of enticing disclosures, even from abroad, encouraging *our* own inventors has an added importance. It is possible there should be patent taxes for all patent owners not subject to our income tax, these patent taxes to be no greater than the patent taxes charged our citizens by the owner's country.

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